

CHAPTER IV.

THE DISCUSSION OF THE "INVESTITURE" QUESTION—H.

WE must consider the development of the controversy from the last years of the eleventh century to the time of the attempt at a settlement by Paschal II. and Henry V. The period was marked by the development of a mediating opinion, which recognised in various terms the elements of reasonableness in the contentions of both parties. It is better to speak of a mediating opinion rather than a mediating party, for we can find this in men who might, in relation to the more general conflict of the time, with which we shall deal later, be described as adhering to either the one or other of the great parties, or sometimes even as not belonging strictly to any party.

It might, indeed, seem that the death of Gregory VII. in 1086, and of Henry IV. in 1106, might have changed the whole situation, but, so far as the " investiture " question was concerned, this was not the case. The successors of Gregory VII., and especially Pope Urban II., firmly maintained Gregory VII.'s prohibition of lay " investiture," while Henry V., on the death of his father, maintained his right to it. It is, however, probable that, though the position of the contending parties might seem formally and in outward appearance the same, the removal of the original protagonists did actually in a great measure alter the conditions, and made it easier for the mediating tendency to develop and assert itself.

The writer in whom we may perhaps say that this mediating tendency began to show itself clearly was Ivo, Bishop of Chartres. Ivo was one of the most learned men of his time, as his great canonical works, the ' Decretum ' and the ' Panormia,' sufficiently show. It is clear from his letters that he was not satisfied with the conditions produced by the conflict on " investiture," and that he was not prepared to accept the total exclusion of the secular authority from a share in the appointment of bishops. In a letter to Hugh, the Archbishop of Lyons, of the year 1096(7), whom he recognises as Primate of France as well as Legate of the Pope, he discusses a question which had arisen as to the appointment of Daimbert as Archbishop of Sens. He contends first that the Archbishop of Lyons claimed an authority over the Archbishop of Sens which was not warranted by canonical authority,¹ and then discusses the objection which Hugh had made to his consecration on the ground that he had accepted the " investiture " from the King of France. He began by saying that he had no trustworthy information that Daimbert had done this, but maintains that even if he had, this was not a transgression against religion. The Popes themselves had recognised the right of kings to grant bishoprics (*concessio episcopatus*) to those who had been canonically elected, and he understood that Pope Urban II. had only prohibited *corporalis investitura*, but did not forbid the king, as head of the people, to take part in the election, or to make the *concessio*. He urges that it was quite immaterial under what form the *concessio* was made, by hand, or by word, or by the staff, since kings had no intention of granting anything spiritual, but only meant either to signify their assent to the desires of the electors, or to grant the estates or other temporal goods of the churches to those who had been elected ; and he quotes the well-known words of St Augustine in which it is stated that all property is held by human law. Further, while he protests that he had no intention of setting up his own authority against the decisions of the Papal See, as far as they were reasonable and in accordance with the authority of the Fathers, he maintains that these regulations, that is the prohibition of " investiture " by the king, rested not upon any provision of the eternal law, but only on the authority of the Popes (*quia ea illicita maxime facit presidia prohibito*).¹

The position taken up by Ivo in the letter is very significant and important. In the first place, he looked upon the prohibition of lay " investiture " as what we may perhaps call an administrative rule, which might be enforced or not, as might seem expedient, and not as a permanent part of the law of the Church. Secondly, he did not interpret the prohibition as meaning that the king should have no place in episcopal appointments: he maintains that as head of the people he might have his place in the election, and that he had the right of confirmation or bestowal

(concessio). Thirdly, he considers that the form under which the king might do this was immaterial: it had no relation to the spiritualities, but was to be interpreted either as expressing his assent to the election, or as the form under which he conferred the temporalities of the diocese ; and these, Ivo was clear, must be granted by the king, for all property was held under the temporal authority.

Ivo dealt again with the same question in a letter written by him in the name of the Archbishop of Sens and the bishops of the province to Ioscerannus, the Archbishop of Lyons, some years later, probably in the year 1111 or 1112. Ioscerannus had invited the archbishops and bishops of the French provinces to a Council to consider the question of lay “ investiture.” Ivo, in the name of his province, declines to attend this, on the ground that it was not competent to the Primate to summon a council of the kingdom, but he also objects to any public discussion and condemnation of the action of Paschal II., who had, in the year 1111, as we shall see later, conceded the right of “ investiture ” to the Emperor Henry V., but had already written to Ivo and other bishops retracting this concession, and saying that he had only granted it under coercion. Ivo urges that it was not right that they should meet in Council to consider the conduct of the Pope, inasmuch as they had no power to judge or condemn him unless he had departed from the faith.¹ He urges that the question of “ investiture ” was not a question of heresy or of the eternal law, but, as he had said in the earlier letter, a question of administrative order, and that it was thus reasonable that the Pope should have allowed various persons to

purge themselves of the offence of having received “ investiture,” by surrendering their pastoral staffs, and receiving them again from the Apostolic hand. If any lay person thought that in the giving and receiving of the pastoral staff there was anything of the nature of a sacrament, or that he could give the res of an ecclesiastical sacrament, he was indeed a heretic. Finally, he gives his own opinion as being that, inasmuch as this “ investiture ” by the hand of a layman was an invasion of another man’s right, it should be abolished, when this could be done without causing schism, but if it would have this consequence, such action should be postponed.¹

Ivo thus again made it clear that he looked upon the question of lay “ investiture ” as a matter belonging to the administrative order of the Church, and not to the necessary and eternal law, for it had no relation to the spiritual office of the bishop. It would seem, however, that he had come to the conclusion that lay investiture with the pastoral staff was a cause of scandal, and that it would be well if it could be abolished, provided this could be done without causing serious disorder and strife. Ioscerannus of Lyons, in his reply, maintains that while the act of investiture was not heresy, the opinion that it could be permitted was a heresy.¹

If Ivo of Chartres represents a mediating tendency among those who on the whole supported the Papal party—and, as we have seen, he is careful to say that he does not presume to criticise or condemn the judgment of the Pope on lay “investiture” — we may take Hugh of Fleury as a good representative of those who were critical of papal action, but who on the question of “ investiture ” tended to a mediating position. His important treatise, ‘De Regia Potestate et Sacerdotali Dignitate,’ with which we shall later deal more fully, was written in the first years of the twelfth century, and dedicated to Henry I. of England. In this he maintains that the king has the right to confer the *præcelsatus honorem* while the archbishop confers the cure of souls, and he alleges that this had been the custom until his time. When the people or clergy elect the bishop according to ecclesiastical custom, the king should not tyrannically interfere with the election, but should lawfully give his consent, if the person elected is properly qualified ; but both the king and the people have the right to refuse their assent to the election of an improper person. After the election, the king should invest with the temporalities, but not with ring and staff, which should be conferred by the archbishop. Thus, he maintains, the Temporal and Spiritual powers will each retain that which belongs to their authority.²

The position of Hugh is, perhaps intentionally, not quite clear on all points : he does not

definitely say that the election always belongs to the clergy and people, but in his treatment of the position of the king he is clear that the king must not act arbitrarily. He also, like Ivo, distinguishes very sharply between the spiritual office of the bishop, which must be conferred by the archbishop, and his secular position, which he receives from the king ; and he explicitly condemns the use of the staff and ring by the king in conferring the temporalities of the diocese.

There has been preserved a very important treatise on the “ investiture ” of bishops which belongs, as it is thought, to the year 1109.¹ The author of the work is unknown, but it is clear that he belonged to the Imperial party ; it has, indeed, been suggested that the treatise represents a more or less considered suggestion from that side of the possibility of a compromise.² The author maintains, with an imposing array of precedents, the historical right of the temporal authority to make appointments to bishoprics ; he cites that spurious decree of Pope Hadrian I., which had, as we have seen, been brought forward by Wido of Ferrara,¹ but maintains that long before this emperors and kings and mayors of the palace had appointed and invested bishops, and that the practice had been recognised by Popes like Gregory the Great.² He urges that it is immaterial whether the “ investiture ” is made by the king, with a form of words, or with the staff, or in any other way ; but he suggests that the staff is the more suitable symbol, for it has a twofold meaning, either spiritual or temporal. The author seems clearly to connect the right of the temporal power to invest the bishop with the growth of the temporal possessions and power of the Church. The Church, he says, was poor until the time of Constantine, but when the Christian emperor had conferred upon it so many properties and rights, it was reasonable that the king, who is one of the people, and the head of the people, should invest and enthrone the bishop, to whom he had entrusted so much power in the State. Had the bishops remained as poor as the one described by Gregory the Great as lacking even a winter cloak, the matter might have been different, and there would have been no need to require homage and the oath of allegiance from such a man.³

The author relates the right of the king to “ investiture ” to the possession of the temporalities, and is not greatly concerned with the form under which this may be made ; but his reference to the fact that the “ investiture,” such as it might be, with the homage and oath, should take place before the consecration, is significant as indicating that he was determined to assert the freedom of the royal action in consenting to an episcopal appointment. How far his suggestion, that the royal claim might have been dispensed with had the Church remained poor, may have some relation to the startling proposal of Paschal II. for the solution of the conflict, with which we shall deal in the next chapter, we have no means of judging.

Finally, the author urges that the attempt of the Pope to take away the ancient rights of kings in the “ investiture ” of bishops must cause much fear and hesitation to Christ’s people. He admits that if these rights had been abused, this should be corrected by the Popes ; but he complains that the Popes insist that if they should do wrong and act arbitrarily in the appointment of bishops, they must not be reproved, saying that the Supreme Pontiff cannot be judged by any man ; and he reminds them that more than once, when there had been disputes about the papal elections, these had only been set right by the intervention of the Greek or Frank emperors.¹

In the last volume we have considered the position of Gregory of Catino as the most dogmatic defender of the conception that it was impious to resist the royal authority,² and it is therefore not surprising to find that he maintains very firmly the royal prerogative of the “ investiture ” of bishops. Even in his case, however, it is worth while to observe what he understands this “ investiture ” to signify, and the nature of the arguments with which he defends it. His treatise, ‘*Orthodoxa Defensio Imperialis*,’ was written after the accession of Henry V., and it is contended that it should be dated in the year 1111, about the time when Henry V. compelled Paschal II. for a short time to admit his right to “ investiture.”

Gregory is indeed a representative of a very extreme imperialist position, and describes the king as the head of the Church, founding this on some places in the Old Testament, and on a

passage which he attributes to St Chrysostom, which seems to be spurious.³ We shall have to return to this

conception later. He urges that, if this is so, it is unreasonable that the emperor should, be excluded from the appointment to office of the prelates of the Church, who are his members, and that it is suitable that they should be invested with ring and staff by the emperor before they are consecrated by the bishop.¹

Again he argues that if the characteristic ornaments of the Popes were given them by Constantine, quoting to this effect one part of the " Donation of Constantine," much more might the emperor grant to the bishops the ring and staff ; ² but he is careful to explain that this " investiture " does not represent any spiritual office or authority, but only temporal possession and authority.³ Finally, he urges that while the churches were once poor, now they are wealthy, and hold under their authority soldiers and counts, and that it would be very dangerous to the king or emperor if these were not under his control; and that therefore the prelate of the Church who holds this authority from the royal or imperial power must promise the fidelity of himself and his soldiers to the king or emperor.¹

There was indeed one writer of the Papal party of this time whose position might be taken as uncompromising—that is, Rangerius, Bishop of Lucca. In his versified tractate, ' De Anulo et Baculo,' he maintains that the ring and staff are sacred symbols, which must not be accepted from the hands of a layman ; and he describes what he conceives to be their spiritual significance—the ring as the symbol of the union between the bishop and his church, the staff as the symbol of the pastoral and disciplinary office.² In another place, after repeating these interpretations, he denies that these had formerly been given by kings. He maintains that the pastoral staff can never be subject to the sword, and therefore he objects also strongly to the bishop taking the oath to the king, and re-

pudiates the notion that the temporalities of the Church could give the king any authority over it, for these were given to God, and could be reclaimed.¹ Again, he refers to the " Donation " of Constantine, and the great gifts and honours which he conferred upon the Pope ; but he denies emphatically that these conferred upon the Popes their spiritual authority, which, he maintains, they had always possessed.²

No doubt Rangerius is quite uncompromising about the " investiture " with ring and staff, and his treatment of the " temporalities " is not conciliatory.

If now we endeavour to put together the more important principles of the writers whom we have just considered, it seems reasonable to say that on the whole they represent a mediating tendency, or at least a clearer apprehension of the questions which were at issue. Ivo, although in most respects an adherent of the Papal party, agrees with the other party that the prince had the right to some place in ecclesiastical appointments, while Hugh of Fleury maintains that the form of " investiture " by the prince with ring and staff should be given up ; and the author of the ' Tractatus ' is evidently willing that this should be done. Gregory of Catino alone maintains that this should be retained, and he sets out a theory about the position of the prince as head of the Church, which we shall discuss later ; but even he is clear that the " investiture " represents no spiritual power, but has relation only to the temporalities. It is indeed evident that the defenders of the secular claim were becoming more and more clearly conscious that it was on the political importance of the position of the greater ecclesiastics that this claim rested, and this is well expressed by the ' Tractatus ' and by Gregory of Catino.

CHAPTER V.

PASCHAL II. AND HENRY V.

WE must now consider the history and character of the first attempt at a definite settlement of the " investiture " conflict, an attempt which was indeed startling in its boldness and audacity. For the proposal of Paschal II. to surrender the " regalia," that is especially the whole of the quasi-political position and prerogatives of the bishoprics and abbeys, represented a definite attempt on the part of that Pope to secure the spiritual liberty of the Church by the surrender of the temporal authority which it had come to hold.

Before, however, we discuss the complex history of these years, it will be well to observe that in France and England the Papacy and the Temporal powers were able to arrive at an understanding about the question of the appointment of bishops.

It would seem that in France the papal prohibition of " investiture " was gradually accepted, and that in principle the right of election was recognised, though it seems also clear that the king retained his right of approval or confirmation.¹

In England, Anselm on his return in 1100 after the death of William Rufus, took up a firm position about " investiture " and homage ; he would not do homage, and he refused to consecrate bishops who had received " investiture " with ring and staff from the king. He had to leave England again in 1103, but the relations between himself and Henry I. were never broken off, and finally a settlement was reached, though we cannot be certain of all its details.¹

The one statement in which we may no doubt put complete confidence is that of Anselm, in a letter to Pope Paschal, in which he reports that the king had surrendered his claim to the " investiture of churches," and that the king " in personis eligendis nullatenus propria utitur voluntate, sed religiosorum se penitus committit consilio." ²

Eadmer gives two accounts of the settlement at the Council in London in 1107 ; in the ' Historia Novorum ' he reports that the king formally renounced the claim to invest with ring and staff, while Anselm undertook that no one should be deprived of his dignity because he had done homage to the king. In his life of Anselm, he says, " Bex enim, antecessorum suorum usu relicto, nec personas quae in regimen ecclesiarum sumebantur per se elegit, nec eas per dationem virgae pastoralis ecclesiis quibus praeficiebantur investivit." ³ This statement about election is supported by a Croyland MSS. cited by Spelman,⁴ but is flatly contradicted by William of Malmesbury ⁵ and by Hugo Cantor.⁶

It is not easy to arrive at any certainty as to the precise terms of the agreement between Anselm and Henry, except that Henry gave up the claim to invest with ring and staff, while, as Anselm's letter seems to mean, the king abstained from arbitrary interference in elections, while as would appear from a letter of 1106 to Anselm, Paschal II. acquiesced reluctantly in what he hoped would be the temporary concession, that the bishops should do homage to the king.⁷

On the death of Henry IV. in 1106, his son, Henry V., who had hitherto been in alliance with the Papal party against his father, seems to have resumed the practice of appointing to bishoprics and presumably of giving the " investiture " of them. Pope Paschal II., who had succeeded Urban II. in 1099, had maintained the policy of Gregory VII. and Urban II., and had from time to time repeated the prohibition of lay " investiture." No settlement of the great dispute had therefore been reached, but attempts were made after the accession of Henry to arrange for a meeting which should deal with them and, if possible, discover some solution.¹

We cannot here follow the events or the negotiations of these years in detail, but we must notice some of the most important stages of them. At a Council held at Guastalla in October 1106, Paschal II. renewed the prohibition of lay "investiture," but also arranged with the representatives of Henry V. that he would shortly come to Germany.² Finding, however, as Sigebert in his ' Chronicle ' suggests, that the attitude of the king and of the Germans was uncertain, he turned off to France. Henry would not assent to a formal consideration of the " investiture " question, as it related to Germany, at a Council held outside of German territory.³ An informal meeting, however, took place at Chalons early in May 1107, and at this meeting, of which the Abbot Suger gives a fairly detailed account, the Archbishop of Trier put forward a statement of the royal claim which is very noteworthy. As far back as the time of Gregory the Great, he said, it was known that it belonged to the lawful right of the Empire that the following form of election should be observed. Before the formal election took place the consent of the emperor to the person to be proposed should be procured, then the formal election should take place on the demand of the people, the election of the clergy, and the assent of the honoriatores. After consecration the bishop should go to the emperor to be

invested with the “ regalia ” by means of the ring and staff, and should do homage and fidelity. On no other condition ought he to be in possession of the towns, castles, &c., which belonged to the imperial authority. If, he said, the Pope would agree to this, the kingdom and the Church would be at peace.¹

We cannot be certain that Suger’s account is in every detail correct, but there seems no reason to doubt that it is substantially true, and in that case it has considerable importance, for these proposals represent a substantial advance on the part of Henry V. towards a settlement. There are two very significant elements in the statement: the first, that the king demands not the right of appointment, but the right to be consulted before the election, and the veto ; the second, that while Henry holds to the claim to invest with staff and ring, this was to follow, not to precede consecration, and this is definitely related not to the general character of the episcopal office, but to the grant of the “regalia.”

It would appear from Suger’s narrative that for the moment the royal proposals received no serious attention. He represents the Bishop of Piacenza as urging, in the name of the Pope, that if the Church could not elect a bishop without consulting the king, it would be equivalent to reducing the Church to slavery—that the royal investiture with ring and staff was a usurpation of the divine right, and that the ceremony of allegiance was contrary to the dignity of the clergy. The Germans, Suger says, heard the statement with great indignation, and threatened that the quarrel should be settled “not here, but at Borne and with the sword.”²

At the end of May Paschal held a Council at Troyes and there promulgated a decree for the free election of bishops, and condemned the interference of the laity in ecclesiastical appointments ;¹ but it was, at the same time, agreed that Henry V. should come to Italy in the following year, and that the whole question should then be considered at a General Council.² This arrangement fell to the ground, but negotiations between the Pope and Henry continued, and it has been suggested by Dr Peiser that the ‘ Tractatus de Investitura,’ which we considered in the last chapter, belongs to this time, and represents a definite movement of the Imperial party towards a compromise.³ In the year 1109 Henry V. sent an embassy, composed of important bishops, to the Pope to announce his intention of coming to Rome ; the envoys were well received by Paschal, and were assured by him, according to the ‘ Annals of Paderborn,’ that he would ask for nothing but that which belonged to canonical and ecclesiastical right, and would not in any respect endeavour to diminish the rights of the king.⁴

In August of the year 1110 Henry V. set out on his expedition to Italy accompanied by a large army, and by the end of the year he had arrived at Arezzo, and from there entered into communications with Paschal II. ; from Acquapendente he again sent envoys, and they returned to him along with the representatives of the Pope at Sutri.

In considering the main points of the negotiations which followed it may be well to begin by considering the short account which is given of them by Ekkehard in his ‘ Chronicle.’ The envoys of the Pope declared that he was willing to consecrate the king, and to render him all honour and goodwill, if the king would promise liberty to the Church by forbidding lay “investiture.” In return the Pope undertook that the Church should surrender all duchies, countships, tolls, &c., and all the other “ regalia ” which it possessed. The king assented to this proposal, but on condition that this arrangement should be established “ firma et autentica ratione, consilio quoque vel concordia totius aecclesiao ac regni principum assensu.” That is, the king required that this agreement should be sanctioned by the counsel and consent of the whole Church, and the assent of the princes of the Empire. Ekkehard adds that the king did not believe that these could be obtained.¹

We possess the details of the negotiations and of the events which followed in two forms : the one a narrative, written by an adherent of Paschal H., who was himself an eye-witness, which was embodied in the Register of Paschal II., and passed into the ‘ Annales Romani ’ ; the other an encyclical letter of Henry V. addressed to all Christian people. These not only contain accounts of the events, but also reproduce some of the more important documents in which the attempted agreement was embodied.

The first important documents are those which contain the reciprocal promises of Henry V. and Paschal II. Henry V. promised that, when the Pope had carried out what in his agreement he undertook with regard to the "regalia," he would surrender all claim to the "investiture," and that the Church should go free with the " oblations " and possessions which did not belong to the kingdom ; and that he would restore the patrimony and possessions of St Peter, as had been done by Charles, Louis, Henry, and the other emperors.¹

Paschal H. promised by Peter Leonis, the Prefect of Rome, that if the king fulfilled his undertaking, as expressed in the other document, the Pope, on the day of the coronation of the emperor, would command the bishops who were present to surrender to the king and kingdom the "regalia " which had belonged to the kingdom in the time of Charles, Louis, Henry, and his predecessors. He undertook that he would, in writing, command with " authority and justice," and under the penalty of excommunication, that no one of the bishops, present or absent, or their successors, should interfere with or invade these same " regalia "—that is, the cities, duchies, countships, &c., which clearly belonged to the kingdom.² Peter Leonis swore that if the Pope should not carry out his promise he would join the king.¹

With these mutual undertakings we must now compare a declaration which is included in Henry's encyclical. It is suggested by the editor of the ' Constitutions ' that Paschal was to have promulgated this on the day of the coronation. This document contains not only the formal decree commanding the restoration of the " regalia," but also a reasoned statement of the circumstances which had led the Pope to take this measure. He declares that, while no priest ought to take part in secular business or attend secular courts, except for the purpose of assisting any who were oppressed, in Henry's kingdom the bishops and abbots were continually occupied with secular affairs because they had accepted from the king, cities, duchies, and other charges which belonged to the service of the kingdom. To this cause he traces the growth of the custom that no bishop should be consecrated till he had received " investiture " from the king. This had been the cause of simony, and of appointments to bishoprics without election, and it was to remedy these evils that Gregory VII. and Urban H. had condemned all lay "investiture," and that he had confirmed this action. Therefore he decrees that all the " regalia " which belonged to the kingdom in the time of Charles, Louis, Henry, and the king's other predecessors were to be surrendered, and that no bishop or abbot was for the future to claim them, unless by some special favour of the king, and that no one of his successors in the Apostolic See was to molest him or his kingdom with regard to this matter. He then decrees that the churches, with the oblations and possessions which clearly did not belong to the kingdom, were to be free, in accordance with the promise which Henry had made on the day of his coronation.¹

It is clear that we have in these mutual promises an attempt to put an end to the " investiture " conflict in a manner which was little less than revolutionary. We can see that it was recognised that the " investiture " conflict had arisen out of conditions which in some measure justified the demands of both sides. The Pope admits that it was the fact that the bishops held great political powers, which had led to the claim that the bishop could not be consecrated without the royal consent and "investiture," and he contends that this had led to simony, and the frequently complete destruction of the right of free election. It was, therefore, to destroy the root of the whole trouble that Paschal proposed that the Church should surrender the regalia, while Henry promised in return to surrender "investiture." The proposals were indeed far-reaching and radical. They did not indeed mean that the Church would have been divested of all property : it would have retained the tithes and much of its lands ; but they would, if carried out, have completely altered the political position of the Church, especially, no doubt, in Germany, but in a large measure in all European countries.

The encyclical letter of Henry V. was intended as a general vindication of his conduct both in regard to these negotiations and to the events which followed. We must consider it therefore first as representing what Henry wished the world to understand as his own attitude to the proposals. He begins by representing himself as anxious to serve the Church and to

conform to its wishes, so far as was just. Paschal proposed to him measures which should exalt and enlarge the kingdom, but in reality was treacherously endeavouring to destroy the actual position of the kingdom and the Church. Paschal, he says, proposed without any formal deliberation (*absque omni audientia*) to take away from the kingdom that form of “investiture” of bishops and abbots which it had possessed since the time of Charles, for more than three hundred years. When the royal envoys then asked what would in that case become of the royal authority, inasmuch as his predecessors had given almost everything to the churches, Paschal replied that the king should receive and retain all the estates and “*regalia*” which had been given to the churches by Charles, Louis, Henry, and his other predecessors, while they should be satisfied if they retained the tithes and oblations. The royal envoys replied that the king was unwilling to do such violence to the churches, and to incur the charge of sacrilege. The Pope faithfully promised, and his envoys swore for him, that he would himself “*cum iustitia et auctoritate*,” take these things from the churches and transfer them to the king and the kingdom. The royal envoys therefore promised that if the Pope carried out his undertaking—though they knew that this could not be done—the king would surrender the “investitures” of the churches.¹

It is clear first that Henry V. was anxious that he should not be held responsible for the proposal to deprive the bishoprics and abbeys of their political position and authority, that it was the Pope from whom this had come ; and secondly, that he wished it to be believed that he himself had never thought that the Pope could carry out his undertaking. Ekkehard, as we have seen, says that the king’s assent was only given on the understanding that the Pope’s promise should be ratified by the counsel and agreement of the Church and of the princes of the kingdom, and it seems probable that this is what is meant by the phrase which Henry reports as having been twice repeated in the papal promise, namely, that this should be done “*cum iusticia et auctoritate*.” It is, as we shall see, the resistance of the bishops and abbots, both German and Roman, which Henry represents as causing the failure of the proposed arrangement.

We turn then to consider the actual events which followed on Henry’s arrival in Rome. Henry’s encyclical represents himself as having been treacherously attacked when he entered the city ; but without allowing himself to be disturbed, he says, he proceeded to the gates of St Peter’s and then, to make it clear that he intended no injury to the Church of God, promulgated a statement. He then demanded that the Pope should carry out his promise, as contained in the “*Promissio Papa?*,” “*cum iusticia et auctoritate*.” When, however, the Pope attempted to promulgate this, he was resisted to the face by all the bishops and abbots, both German and Roman, and by all the sons of the Church, who denounced his decree as being mere heresy.¹

Henry’s encyclical, unfortunately, is broken off at this point. Ekkehard’s account, which is chiefly based upon a narrative composed by a certain David the Scot, whom Henry had brought with him,¹ gives a similar description of the tumultuous resistance of the “princes” to the proposals of the Pope, which involved the spoliation of the churches, and the loss of their “beneficia.”²

The account given in the Roman narrative is more detailed. After relating the arrival of the king in Rome, and his reception and designation as emperor by the Pope on the steps of St Peter’s, it proceeds to relate that they all entered the church, and the Pope then requested Henry to complete the renunciation of the right of “investiture” and the other promises which he had made, while he on his part was prepared to fulfil what he had promised. Henry, however, instead of at once complying, withdrew with his bishops and princes into a part of the church near the “*secretarium*,” and there deliberated with them. At last, after a long delay, the German bishops returned, and declared that the written agreement could not be confirmed “*auctoritate et iustitia*.” The Pope replied by urging that “the things which are Caesar’s should be given to Caesar,” and that no one in the service of God should involve himself in secular matters ; but they persisted in what the Roman narrative calls their “deceitfulness and obstinacy.”³

The tenor of the arguments which are attributed to the Pope seems clearly to refer to the surrender of those rights of the bishops which did not belong to their spiritual office, and it would seem therefore that, by the agreement which the German bishops said could not be confirmed, they meant the agreement to surrender the "regalia," and that, when they said that it could not be confirmed " auctoritate et iustitia," they meant that the consent of the Church was necessary and would not be given.

The negotiations thus broke down, and we must consider briefly what followed. The discussions continued all day till the evening was coming on ; it was then proposed by the friends of the Pope that he should proceed at once with the coronation of the emperor, while the further negotiations should be postponed till the following week. The representatives of Henry would not, however, agree to this, and finally the Pope and his companions were held captive. On the following day the Romans vigorously attacked the German forces, and on the third day Henry retreated from Rome, carrying the Pope and cardinals with him. The Pope was held in captivity, while Henry demanded that he should formally recognise the royal right of " investiture " ; but he also declared that the right which he claimed had no reference to the churches or the spiritual functions of the bishop, but only to the "regalia." Finally Paschal, overcome by the representations which were continually made to him of the devastation of the Roman territory, the ruin of the Roman city and Church, and the imminent danger of schism, gave way, saying that he was compelled to do that for the liberation of the Church which he would never have done to save his life.¹

The documents containing the actual terms of the agreement are contained in the Roman narration and in a second imperial report. The terms under which the papal concession was first made are very important. The Pope promises to confirm by a " Privilegium " the following arrangements. The bishop or abbot is to be freely elected without simony, with the assent of the king. He is then to be " invested " by the king with the ring and staff. The bishop or abbot who has thus been freely "invested," is freely to receive consecration from the person to whom this belongs. No one, who has not received " investiture " from the king, may be consecrated, even though he has been elected by the clergy and people. Archbishops and bishops are to be permitted to consecrate those who have received " investiture " from the king.¹ The surrender to the imperial claim was very complete, but it should be noticed that Henry V. conceded in principle the right of a free election, and only claimed for himself the right to give or refuse his assent. The concession may be construed as formal, but is not unimportant.

The actual " Privilegium " repeats the terms of the promise, but it contains some important additions. It states that the right of " investiture " had been granted by Paschal's predecessors to former emperors, and thus apparently admits the authenticity of those spurious documents according to which this right had been granted by Pope Hadrian I. and Pope Leo III. We have already noticed the citation of these by Wido of Ferrara.² More important, however, is the reason given for this, namely, that the grant of the " regalia " to bishops and abbots had been on so great a scale that the safety of the kingdom was dependent on them.¹ This reference to the importance of the "regalia" to the Empire corresponds with the statement which we have just noted, that Henry V.'s claim to the right of " investiture " had reference only to the " regalia " and not to the spiritual office of the bishop.

Ekkehard narrates these events briefly, and concludes with the expression of joy that at last the glory of God and peace on earth had been reached, and the long scandal of division had been removed ;¹ but his joy was premature, for the action of the Pope was almost immediately repudiated by a large part of the Church, and within a short time Paschal II. found himself compelled to repudiate the concession which he had made.

CHAPTER VI.

THE DISCUSSION OF THE ACTION AND THE PROPOSALS OF PASCHAL H.

FOR the moment and under coercion Paschal H. had yielded to the demands of the Emperor Henry V., and had conceded the right of " investiture " : but it was only for a moment. Within a

year the feeling of the Church as a whole had declared itself so emphatically against his surrender that Paschal II. found himself compelled to withdraw it.

It is important to consider the contemporary discussion of his action, for it indicates that the way of compromise was not really closed ; and it is also important to consider the discussion raised or suggested by his proposal to surrender the "regalia."

The mood of the extreme papal party is well represented in some letters written at the time by Bruno of Segni. In one of these, which is addressed to Paschal himself, Bruno, while protesting his love and devotion to him, urges that he must love Christ more, and denounces the agreement which had been made under circumstances of violence and treachery. He appeals to Paschal's own earlier condemnation of lay " investiture," which he says was in harmony with the apostolic order, and he denounces as heretics men who contradict the faith and doctrine of the Apostolic Church.¹

The same point of view is set out in even stronger terms in a treatise or letter by Geoffrey, the abbot of Venddme, addressed to Paschal after his concession to Henry V., and before the Lateran Council of 1112, at which Paschal retracted it. The Church, he says, lives by faith, chastity, and freedom, but the toleration of lay " investiture " destroys all of these ; and he bluntly says that though the shepherd of the Church must be endured, even though his character should be evil, if he falls into heresy he is no longer to be reckoned as the shepherd.¹ This is a very uncompromising statement, and illustrates forcibly the fact that there were eminent Churchmen who felt so strongly upon

the question that they were prepared even to revolt against the Pope himself rather than to accept what they conceived to be ruinous to the freedom and purity of the Church.

This was no doubt the predominant feeling, and it was to this that Paschal H. was compelled to defer when he revoked his agreement with Henry V. ; but it would be a serious mistake if we were to think that the mediating tendency which we considered in Chapter V. had been over-powered and had disappeared. On the contrary, it survived in the attitude of Ivo of Chartres, and what is more remarkable, it began to find expression even in the utterances of men who urged the prohibition of lay "investiture" with great determination.

We have already considered the position of Ivo of Chartres in his letter to loscerranus, the Archbishop of Lyons, probably written before the Council of 1112, and the formal retraction by Paschal II. of his concession. He refuses to recognise that lay " investiture " could be treated as a heresy, and maintains that the permission or prohibition of it belonged to the administrative order of the Church and not to the " eternal " law. Possibly we may see the impression made upon Ivo's mind by the vehement resentment which Paschal's action had produced, in the fact that he now was disposed to the view that it would be well that lay investiture should be abolished ; but he qualifies this by adding the condition that this should be done if it could be effected without causing schism.¹

More remarkable, however, is the standpoint of a treatise written probably shortly after the retraction. The author states the arguments against lay " investiture " with ring and staff with much force, and urges that these were the symbols of spiritual things, and could not be granted by kings. On the other hand, he seems to admit that it is for the king to grant the "regalia," and suggests that he could do this with the sceptre, the symbol of his authority over his country, with which he grants dukedoms, countships, and the other "regalia."¹ It is noteworthy that this writer thus suggests the actual form under which in the settlement of Worms the emperor was to confer the " regalia." ³

The most noteworthy as well as the most detailed discussion of the questions raised by the concessions and by the proposals of Paschal II. is, however, to be found in a very important work by Placidus of Nonantula, written apparently towards the end of 1111,³ for he deals not only with "investiture," but also with the whole question of Church property. His position seems at first sight in the highest degree uncompromising, for he might seem to deny altogether that there was any ground for the claims of the secular power. A closer examination, however, leads us to modify this judgment, and to suggest that while he demands the abolition of lay "investiture," he is not unwilling to accept some middle course

upon the matter, and that his arguments about Church property are directed not so much against the royal claims as against Paschal's proposal to surrender the "regalia."

He repudiates, indeed very firmly, the action of Paschal in granting to the emperor the right of "investiture," and demands that he should repudiate this concession.⁴ He denies that the anointing of the emperor gave him any claim to appoint bishops or abbots.¹ He was aware of the contention that Pope Hadrian I. had formally granted the right of "investiture" to Charles the Great, and he was not apparently in a position absolutely to deny the authenticity of the grant, though, in referring to it, he frequently suggests a doubt. He argues, therefore, that it had some other and innocent meaning, or it was related to some conditions of that time, and might have been useful then, but must now be rescinded on account of the mischief which had arisen; or it had been granted by Pope Hadrian in human weakness and error, for Hadrian himself, in the Eighth Synod, had explicitly condemned all interference by the lay authorities in episcopal elections. The Popes themselves, while they have authority, "novas condere leges," cannot alter the laws which the Lord or His Apostles, or the Fathers who followed them, had established.² He is therefore clear and emphatic in demanding the abolition of lay investiture, and he cites a number of the well-known canonical regulations which lay down the principle that bishops must be elected by the clergy and people of the diocese;¹ and in another place he adds that the election of the bishops is to be subject to the judgment of the Pope and his vicars, or of the archbishops.²

So far, then, it might well seem that Placidus was wholly uncompromising, but this impression is corrected when we look a little further. He admits that there is force in the contention of those who urge that it is unreasonable that the emperor or prince should be excluded from any part in the election of the bishops, while this is permitted to the people, and he affirms that this is not what he intends. The emperors or princes have their part in such elections, like the other people in the diocese,—that is, in those dioceses of which they were, more especially, the sons,—but not as masters or lords; and they should confirm the election in this sense, that they should defend it with the material sword, for it is their proper function to compel those who do not fear the spiritual sword, by the terror of the material one.¹ This is not unimportant, though the statement is evidently carefully guarded; but Placidus goes much further than this. We shall presently deal with his treatment of Church property, but in the meanwhile we must observe that he frankly recognises that the tenure of this property may involve certain obligations to the secular power which the Church must fulfil. The Church, he says, must pay tribute,² and it must render other services to the prince, which Placidus does not specifically define, especially in those cases where some special rights were reserved by him when the property was granted to the Church.³ He admits, in one passage, that if the prince desires to give something of that which belongs to himself to a bishop, he may properly invest him with this under the same forms which would be used in the case of other men, while he must not do this with the ring and staff;¹ and in another place he makes a definite proposal, and expresses the hope that it may tend to the establishment of a firm peace between the "regnum" and the "sacerdotium," if it is arranged that when the bishop has been canonically elected, invested, and consecrated, he should, either in his own person or by his representatives, go to the emperor and ask for the imperial "praeceptum," with reference to the Church property which has been committed to him. The emperor should then gladly grant and confirm to him that which his predecessors had granted to the Church, and promise the bishop and his church the imperial protection.²

It is clear that the position of Placidus, as well as that of the author of the 'Disputatio vel Defensio Paschalis Papa?', represent a real advance on the part of the supporters of the papal policy towards an understanding—certainly it is evident that they appreciate in some measure the more important aspects of the contention of men like Wido of Ferrara.

We must, however, turn aside for a moment to consider the whole treatment of the nature of the property of the Church by Placidus. It seems to us probable that this is in the main

directed against the proposals of Paschal H. for the surrender of the “regalia,” and these proposals were of so far-reaching a kind that anything which we can find which will throw light upon them is of great importance.

In the Prologue to the work with which we are dealing, Placidus cites the words of some writers, speaking in the name of the secular rulers who said that, as the Church was spiritual, it had no property in earthly things, except in the actual church buildings, and that if Churchmen desired earthly possessions they could not obtain them by the law of the Church. If it had not been for the gifts of the temporal rulers the clergy would possess nothing except the oblations brought to the altar, the tithes and the first-fruits : all other property belongs to the prince, and therefore those who desire bishoprics and abbeys must obtain them from him, or cease to possess what belongs to him. If the clergy were content with the tithes and first-fruits and oblations, the matter was in their own hands ; but if they desired to have the property which was formerly given to the Church, they could only obtain this from the prince.

Placidus denounces these principles as abhorrent to all true Catholics, inasmuch as it is the Holy Spirit who has granted to the Church not only spiritual but also material things, and wills that bishops should have both the small and the great possessions which have been dedicated to God in their power. That which is given to the Church is given to Christ, and those who take it away are guilty of sacrilege. That which belongs to the Church ought to be in the power of the bishops,

who are elected not by any earthly authority, but by the clergy and laity of the diocese, and are confirmed by the other bishops. The Church owes nothing to kings except the payment of “tribute.”¹

These positions are further developed in the body of the treatise. What has once been given to the Church belongs permanently to Christ.² It is impossible to separate the material possessions of the Church from the spiritual without rending it in two : for just as a man cannot live without a body, so the Church cannot exist in the world without material things.³ Some, he says, maintained that the Church possessed in the full sense of the word only tithes, first-fruits, and oblations, and that immovable property like castles and estates only belonged to it so far as the bishop received these from the hands of the emperor. This, Placidus maintains, was false, for that which has once been given to God belongs to Him for ever.¹ Again, he refers to the contention that, while the church itself, being consecrated to God, belonged only to God and His priests, those things which the Church in its glory now possessed, such as duchies, countships, and cities, belonged in such a sense to the emperor, that unless the grant of them was renewed to each bishop on his succession he could not have them, and from this it followed that it was for him to grant “investiture.”²

Placidus repudiates these contentions with great energy, and maintains that not only the small possessions which the Church had before Constantine, but the great property which it had received since his time all belonged to the Church, because they were all given to God ;³ and he interprets the rule that the bishop or abbot should receive the pastoral staff from the consecrating archbishop, as signifying that he received not only the authority of ruling the people, but also the temporal possessions of the Church from the Lord Himself.⁴ Another contention which he put forward is important—namely, that the property of the Church is the property of the poor, and could not be taken by the clergy for their personal use, except to provide themselves with the necessary food and clothing, and could not therefore be given to princes.¹

This is all very uncompromising, but we must bear in mind those passages which we have already considered, in which Placidus proposed some recognition of the position of the emperor with regard to those possessions which his predecessors had conferred upon the Church. The impression which is left upon us is, that what he is really concerned to do is to repudiate the principles which may have lain behind Paschal 11.’s offer to surrender the “regalia.”

It is most unfortunate that we have practically no other immediately contemporary discussion of this question. In the works of Gerhoh of Reichersberg, written between 1126 and

1169, we have indeed very important discussions of the whole question, but it seems to us on the whole better to consider these later. For though it is probable that the considerations which made him doubt the advantages of the tenure of the “ regalia ” by the bishops were of the same kind as those of Paschal II., we cannot be wholly confident of this. And in any case, the subject is so large and important that it requires a separate treatment.

CHAPTER VII.

THE SETTLEMENT OF WORMS.

THE first attempt at a settlement of the “ investiture ” question had failed, and for a few years it might have seemed as though no progress had been made. At a Council held in the Lateran in March 1112, Paschal related the circumstances under which he had been coerced into his concession to Henry V., and, while protesting that he would not excommunicate him, left it to the Council to determine how it should be rescinded. On the last day of the Council he solemnly reaffirmed the decrees of Gregory VII. and Urban II., and the Council formally condemned the “ Privilegium.”¹ The more determined Churchmen were not, however, satisfied with this, and in September 1113, Guido, the Archbishop of Vienne (afterwards Pope Calixtus II.), held a Council at Vienne, which declared that lay “ investiture ” was a heresy, and formally excommunicated Henry V., and then wrote to Paschal peremptorily requesting him to confirm their action, and intimating that a refusal to do this would force them to renounce their obedience to him.¹ Paschal evidently felt himself compelled to give way, and in his reply to Guido confirmed the proceedings of the Council at Vienne.² In 1116, at a Council held in the Lateran, Paschal again declared the “ Privilegium ” given to Henry null and void, and excommunicated those who gave or received lay “ investiture ” ; and Cardinal Kuno reported that he had excommunicated Henry V. at various Councils in Hungary, Lorraine, Saxony, and France.³ It is clear from the narrative of Ekkehard that the Papal party was again supreme among the bishops in Germany, and that the political disorders in Germany were again growing rapidly.⁴

Paschal II. died on January 21, 1118, and it had become evident that Henry’s success at Rome in 1111 had been merely apparent, and that a settlement upon these lines was impossible. His successor, Gelasius H., was elected on January 24. According to Ekkehard, Henry V. at first gave his assent, but finding that Gelasius withdrew himself from communion with him, he set up Maurice, the Archbishop of Bruges, as antipope. Gelasius and a number of the cardinals retired to Capua, and on April 7 excommunicated both Henry V. and the antipope.¹ The Cardinal Legate held a Council at Cologne in May, and proclaimed the excommunication ; and Ekkehard reports that the princes proposed to hold a meeting at Wurzburg, when Henry should be requested to answer in person, or, if he refused to attend, should be deposed.²

Gelasius H. died on January 29, 1119, and on February 22 Guido, the Archbishop of Vienne, who had, as we have seen, been the most vehement opponent of Paschal’s concession to Henry, was elected Pope as Calixtus H.³ The election was made by the cardinals and other Roman clergy and laity at Cluny, where Gelasius had died, and it was at once accepted and confirmed by the cardinals who were in Rome,⁴ and by a Council held at Tribur in Germany in June.⁵ Calixtus summoned a Council to meet at Rheims in the autumn, and Henry was compelled to set his face towards some understanding with the Pope.⁶

It was under these conditions that the second attempt to arrive at a settlement of the “investiture ” question was made, and a detailed account is given of this by Hesso. The initiative was taken by two eminent French Churchmen, William of Champeaux, now Bishop of Chaldns, and the Abbot of Cluny. They visited Henry V. at Strassburg, and urged on him the need of surrendering the “ investiture ” of bishops and abbots, but William of Champeaux, while he told him that neither before nor after consecration had he received anything from the hand of the king, also assured him that he faithfully rendered to the King of France all those mili

tary services and dues which the German bishops rendered to their sovereign. Henry replied that he wanted nothing more than this, and they undertook to endeavour to bring about

peace.¹ On this basis the negotiations were initiated, and terms of agreement were drafted and provisionally concluded, which were to be confirmed at a meeting between Cahxtus and Henry, which was to be held at Monzon on October 24. Under these terms Henry was to surrender all "investitures" of all churches, and to make peace with those who had maintained the cause of the Church, restoring their churches and possessions. Any question arising out of these terms, if it related to ecclesiastical things, was to be determined by canonical judgment; if to secular things, by the secular judgment. The Pope promised to give peace to Henry and his supporters, and to restore their possessions, under the same terms as in the agreement of the emperor.² It seemed for a moment as though a settlement had been reached, but it is clear that there had either been a misunderstanding about the significance of the terms used, or that the emperor on reflection became convinced that he was surrendering too much.

Calixtus II. reached Rheims on October 18, and provisionally opened the Council, which was attended by two hundred and fifteen archbishops and bishops, besides abbots, and the King of France. He proceeded to Monzon on October 23, and Henry V. encamped near. Before, however, they could meet, doubts had arisen in the papal circle about the real meaning of the phrases which were to be accepted by Henry. These stated that Henry was to surrender "all investiture of all churches," but it was suggested that these phrases were ambiguous and needed interpretation, lest under cover of these he should lay claim to the possessions of the churches, or to the right to invest with these possessions. It was also urged that the Pope's promise might be construed as meaning that he would recognise the bishops of the Imperial party who had been intruded into sees which were already occupied by legitimate bishops, or had been canonically deposed. William of Champeaux and the Abbot of Cluny, accompanied by the Cardinal-Bishop of Ostia, the Bishop of Viviers, and other papal envoys, were sent to the emperor, and they set out the meaning of the draft agreement in the terms which had been agreed upon in the papal circle. The emperor at first flatly denied that he had promised any of these things. William of Champeaux declared that he was prepared to swear that the emperor had confirmed all these promises, and that he had understood the emperor in this sense. When the emperor was at length compelled to confess that this was true, he complained that these promises which he had made by their advice could not be carried out without grave injury to the position of the Empire. William of Champeaux replied by assuring him that the Pope had no wish to diminish the authority of the Empire, and that he declared emphatically that the bishops were to render to the emperor the same services, military and other, as they had always done.¹ Henry then asked for a day's delay that he might consult with the princes, but when the papal envoys returned on the following day he asked for a further postponement, until he could hold a general consultation with the princes of the Empire, without whose consent he could not venture to surrender the "investiture." William of Champeaux indignantly broke off the negotiations, and the Pope returned to Rheims, and a few days later, October 29, brought forward the decrees which he desired the Council to accept.

In the Council, however, there at once appeared a grave divergence of opinion. The second decree as proposed by the Pope read: "Investituram omnium ecclesiarum et ecclesiasticarum possessionum per manum laicam fieri modis omnibus prohibemus," but there was so much opposition to this on the part of many of the laity, and even of some of the clergy, that the discussion continued throughout the whole day. It was contended that under these terms the Pope was endeavouring to take away the tithes and other ecclesiastical "beneficia" which the laity had of old time possessed. The opposition was so determined that on the next day the Pope proposed the decree in another form: "Episcopatum et abbatiarum investituram per manum laicam fieri penitus prohibemus. Quicumque igitur laicorum deinceps investire presumpserit, anathematis ultioni subiaceat. Porro, qui investitus fuerit, honore, quo investitus est, absque ulla recuperationis spe omnimodis careat." In this form the decree was unanimously accepted, together with another decree affirming the right of the churches to all those possessions which kings and other Christian people had bestowed on them, and

anathematising any one who should venture to seize them.¹

The attempt to arrive at a settlement had for the time failed, but it is important to observe the causes and conditions of the failure, so far as we can arrive at them from the narrative of Hesso. William of Champeaux and the Abbot of Cluny had proposed a complete surrender of the right to "investiture," urging upon the emperor that this would make no difference at all in the political obligations of the bishops and abbots. Henry had accepted this proposal in the form that he surrendered the right to invest with the churches. The advisers of the Pope, however, suspected that this might mean that he reserved the claim to the temporalities of the Church and the right to invest with them, and urged that the phrases required interpretation. Hesso does not say what precisely was the interpretation which William of Champeaux and his colleagues communicated to Henry, all that he tells us is that Henry repudiated it; but we may conclude that the agreement was construed as implying the surrender of all claim to invest, even with the temporalities. Henry refused to ratify this, maintaining that in such a grave matter he must consult the whole body of the princes. If this interpretation of what passed is correct, it would seem that though the negotiations had failed they had brought out the fact that the emperor was willing to consider the possibility of distinguishing between "investiture" with the temporalities and "investiture" with the spiritualities—a distinction which, as we have seen, had been urged by a number of writers on the subject. The narrative of Hesso, however, brings out more than this, for it shows that there was a serious division of opinion among the supporters of the Pope. This is clear from the fact that Calixtus had to withdraw the form in which he first proposed his decree about "investiture" to the Council at Rhcims. In the first form it explicitly concerned lay "investiture," not only of churches, but also of ecclesiastical possessions; but the feeling against this among the clergy, as well as the laity, was so strong that it had to be withdrawn, and the decree was only accepted in a form which left this question undetermined. We shall probably be right in concluding that even in papal circles the importance of the distinction between "investiture" with the temporalities and with the spiritualities was being recognised.

The attempt at a settlement had for the time failed, but the conditions of the failure were, as we can now see, such as to suggest the possibility of an agreement upon such terms as were actually accepted at Worms three years later. Formally, no doubt, the breach was complete, for Calixtus not only excommunicated Henry V. and the antipope, but also absolved Henry's subjects from their oath of allegiance, unless he repented and did satisfaction to the Church.¹ Calixtus thus reasserted a claim which had not been explicitly made since the death of Henry IV., but it must be observed that it was made as against an emperor who, in setting up an antipope, had himself claimed a similar authority with respect to the Papacy.

We are, fortunately, able to follow the movement of opinion during the last years of the pontificate of Paschal II. and the first years of Calixtus in some contemporary writings. We have already cited the severe and even violent phrases in which Geoffrey, the Abbot of Venddme, addressed Paschal II. when he had yielded to Henry V.,² and he continued to maintain this condemnation of lay investiture in the strongest terms during the years before 1119. Between the years 1116 and 1118 he wrote a letter to Rainald, who claimed to have been elected Bishop of Angers, in which he deals first with the matter of episcopal elections and then with the question of lay "investiture." Geoffrey urges that Rainald's election had been irregular and invalid; he had learned that Rainald had been tumultuously elected by the laity, who had then endeavoured to intimidate and coerce the clergy into consent. This leads to a discussion of the principles which determined what was a right election. The whole appointment of a bishop, Geoffrey says, depends upon election as well as consecration, for a due election must precede consecration. The apostles were chosen and consecrated by Christ Himself: now this must be done by the vicars of Christ. The clergy are His vicars in election, and

the bishops in consecration. Others, that is the laity, may ask for a certain person as bishop, but they cannot either elect or consecrate.¹ Geoffrey desires clearly to assert very emphatically the need of election for a valid appointment, and also to limit the election proper to the

clergy. He goes on to deal very drastically with lay "investiture," and maintains that the Catholic doctrine was that which Gregory VII. had declared ; he distinguishes, indeed, between the heresy of lay " investiture " and that of simony, but he maintains that the first is even more mischievous than the second, for the only reason why the secular authority claimed this right was, either that it might simoniacally extract money, or that it might reduce the bishop to subjection. Investiture with ring and staff was, he maintains, a sacramental action.²

In another treatise which was written, it is thought, a little later, Geoffrey repeats a great part of what he had said, and adds an emphatic assertion that not even Borne could alter the law of the Church on this matter.¹ He refers clearly to the action of Paschal II., and it may be conjectured that he also wished to repudiate the position represented by Ivo of Chartres.

So far, Geoffrey's position was rigorous and uncompromising, but in a treatise which seems to belong to the year 1119 we find a new tone and another attitude. It is not easy to determine the relation of this treatise to the negotiations at Mouzon and the Council at Rheims, for in some respects its principles and proposals go far beyond what apparently Calixtus H. was at that time prepared to concede, and he evidently deprecates any extreme measures against the emperor. The treatise exists in two forms ²—a short one, which contains an exhortation to Calixtus to stand fast against the heresy of lay " investiture " with ring and staff ; and a longer one, in which Geoffrey argues that there was another sense in which lay " investiture " might be admitted. He protests, indeed, that there was no legal nor canonical authority for lay " investiture " with ecclesiastical possessions,

and he seems to maintain that it is not reasonable that those things which had been once granted to the Church should be granted again ; but he admits that all property is held by human law. By the divine law men are subject to kings and emperors, and the Church cannot hold possessions except by the human law ; and he quotes the most significant phrases of that discussion of the nature of private property by St Augustine, to which we have frequently referred.¹ He contends, therefore, that there was no reason why the king should not, after due canonical election and consecration, invest the bishop with the property of the Church under some form, and urges that by this concession peace might be restored to the Church and the State. He concludes with a warning against an injudicious use of excommunication, which was evidently intended to suggest a doubt whether it was wise to excommunicate the emperor, even if he refused to come to terms with the Church, and with a reference to the action of St Peter and St Paul in making concessions to Jewish prejudices.²

The position represented by the treatise is very significant. It recalls the treatment of " investiture " by Ivo of Chartres in his letters, with respect to the relation of the temporalities to the secular power, and also to the possibility of conceding an " investiture " with the temporalities under some form;¹ and it also corresponds with some of the suggestions of Placidus of Nonantula; ² but it gains an additional historical significance when we recall the rigorous position taken up by Geoffrey in his previous writings. We do not know, as we have said, what relation exactly the treatise may have had to the deliberations at Monzon and Rheims, but it certainly serves to bring out the fact that there was already in papalist circles a movement towards compromise, and may help to explain how it was that Calixtus was compelled to withdraw his proposal to condemn lay " investiture " with relation not only to churches, but also to Church property, and to substitute the ambiguous condemnation of " investiture " of bishoprics and abbeys.

Two shorter treatises which, according to one MS., were addressed by Geoffrey to Pope Calixtus, may belong to the same time, or, at any rate, to the years between 1119 and 1122, and may reasonably be interpreted as being related to the mediating position which Geoffrey had now taken up. In the first of these he contends that " dispensationes " should sometimes be given by the authorities of the Church, under which something not wholly perfect might be done or permitted, in order to avert some grave danger to the Christian faith ; and he gives as examples the action of St Paul in circumcising Timothy, and of St Peter in requiring some of the Gentiles to observe the Jewish law. Such " dispensationes " might even change the customs of churches

and abbeys. It is true that he says that these must not permit what is actually evil, and that if the Vicar of Christ were to do this he would be a blind leader of the blind ; but it seems fairly evident that he is retracting or at least restating the judgment which he had expressed in an earlier treatise.¹

In the second of these treatises Geoffrey states briefly the chief conditions which he deemed to be essential for the life of the Church. The Church, he says, must be Catholic, free, and chaste—Catholic, for it must not be bought or sold ; free, for it must not be subject to the secular power ; chaste, for it must not be corrupted with bribes. When a Church is bought or sold the faith is made void, for men think that what God has made beyond all price can be bought by men. When the Church is subjected to the secular power she loses that charter of liberty which Christ wrote for her on the Cross with His blood. When the Church is corrupted with bribes she loses her chastity.² These phrases had already been used by Geoffrey in earlier treatises, and they may have no special significance in this place ; but it is also possible that they may be intended to summarise the essential points which, in Geoffrey's judgment, would have to be taken account of in any settlement, and he may possibly intend to suggest that, so long as these principles were safeguarded, concessions might be made on other points.

Finally, in a treatise addressed to Cardinal Peter Leonis, which may belong to the year 1122, Geoffrey put together the substance of his earlier treatises, that is especially the condemnation of lay " investiture " as he had expressed it in the second and third of these, and also the admission, as he had stated it in the fourth treatise, that a lay " investiture " with the temporalities, after a canonical election and free consecration, might be accepted.¹ It should be observed that almost the only new point urged in this treatise is that consecration as well as election must be free, and that a consecration which is preceded by an oath is not free. It may reasonably be judged that this has reference to the discussion of the terms of settlement at Worms.

The change in the position of Geoffrey of Venddme which is indicated in these treatises is highly significant, and seems to indicate very clearly that, in spite of the failure of the negotiations at Mouzon, real progress had been made on both sides in the apprehension of the possibility of a settlement which should recognise both the principles for which the Popes had been contending, and the reasonable claims of the Temporal Power. This impression is confirmed by an examination of two works which belong to this time—the verses of Hugo Metellus on the conflict between the Pope and the King, and the verses of Hunald on the Ring and Staff. These writers were not men of any great importance, but their attitude is not the less significant.

Hugo Metellus represents the king as urging that former Popes had acquiesced in the custom of royal " investiture," and that this signified the grant of the " regalia " : what harm, the king asks, could it do that he should grant these under the symbol of the pastoral staff ? The Pope replies that his predecessors had indeed tolerated lay " investiture," but unwillingly, and only because the kings of those days had been benefactors of the Church, and maintains that the ring and staff were the emblems of pastoral office and could not properly be used to signify the " investiture " with the temporalities. The king then appeals to the concession of Paschal II., but the Pope replies that this was invalid, for it was granted under coercion. The king then suggests that if the Church were willing to forego the " regalia " he might surrender his claim to " investiture," and that in ancient times the Church did not possess these ; but the Pope refuses to entertain this proposal. The verses end with an agreement on the part of both that the matter was one for consideration in reason and wisdom.¹

Hunald describes the papal contention that the ring and staff are sacred signs of sacred functions. The king agrees to the principle that it is for priests to give sacred things, and only claims the right to bestow the " regalia." Hunald concludes that he would venture to say that the Pope and king were fighting about nothing, for neither sought to injure the other.¹

The negotiations at Mouzon had broken down, but it soon became evident that the attempt

to find some solution would have to be renewed. In June 1121 Henry marched to besiege Maintz, while the Archbishop of Maintz, the leader of the Papal party in Germany, summoned the Saxon princes to his help. Before, however, the actual conflict began, the leaders on each side entered into negotiations with each other, and Henry was persuaded to agree that the dispute should be settled by the judgment of the leading men on each side. It was agreed that a meeting of the princes of the whole kingdom should be held at Michaelmas in Wurzburg to determine this settlement.² The Saxon Annalist gives a detailed account of the conclusions arrived at in this meeting. The emperor was to submit to the Apostolic See, and the conflict between him and the Church was to be settled by the counsel and help of the princes under such conditions that the Emperor should keep what belonged to him and the kingdom, and the churches what belonged to them. The bishops who had been canonically elected and consecrated were to occupy their sees in peace until the meeting of a council to be held in the presence of the Pope. The princes expressed their intention to settle the complaints of the Church against the emperor with regard to “ investitures ” in such a way that the kingdom should retain its honour. If in the future the emperor should take measures against any one for his part in these conflicts, the princes agreed that, by the consent and permission of the emperor himself, they would unitedly, though with all care and reverence, admonish him not to act thus. If, however, the emperor neglected their advice, they would act according to the agreement which they had made with each other.¹

This report is of the greatest importance, especially as indicating the attitude of the princes—that is, that they were determined to impose a reasonable settlement both upon the emperor and upon the Church. Ekkehard summarises the proceedings, and adds the important information that the meeting appointed envoys to communicate what had been done to Eome, and to ask for the convocation of a General Council by the Pope.²

There was some delay before the Pope replied to the envoys, but in February 1122 he wrote to Henry in terms which were indeed not wholly conciliatory, but represented a new attempt at an understanding. Calixtus addressed Henry not only as emperor but as his kinsman, and urged him to grant peace to the Church, assuring him that he had no desire to take away anything which belonged to him or to the Empire. He also, however, warned him that if he still refused to render to the Church what was its due, he would provide for the well-being of the Church by religious and wise men, without regard to the injury which this might inflict upon Henry.¹

Another embassy was sent by Henry V. and the bishops and princes, consisting of the Bishop of Spire and the Abbot of Fulda, who expressed Henry’s desire for peace and concord between the “ regnum ” and the “ sacerdotium,” if this could be obtained without injury to the majesty of the Empire. In response to this, Calixtus sent Lambert, the Cardinal-Bishop of Ostia, accompanied by two other cardinals, as his legates to Germany, with instructions that they were to endeavour to effect a settlement ; and they invited Henry to meet a council of the bishops, which, as it was proposed, should meet at Maintz on the festival of the Nativity of the Virgin.²

The Council met at Worms in September, and the deliberations lasted a month or more. We learn from a letter which Adalbert, the Archbishop of Maintz, wrote to Pope Calixtus shortly after, that the negotiations were at first difficult. Henry could not at first be persuaded to surrender what he considered to be his hereditary right to invest with the ring and staff, and the laity who were present seem to have supported the emperor in his claim. At last, after consultation with the cardinals, and with what Adalbert represents as their reluctant consent, it was agreed that the election of bishops in Germany should be held in the presence of the emperor ; and we may gather that it was in view of this concession that Henry waived his right to invest with ring and staff.¹

The most important provisions of the settlement as finally agreed upon were as follows : Henry surrendered all claim to “ investiture ” with ring and staff, and granted to all churches in the empire the right of free

election and consecration. The Pope, on the other hand, granted to Henry that all elections to bishoprics and abbeys in the German kingdom, which belonged to the kingdom, should be held in his presence, but without simony and violence ; and that, in the case of disputed elections, he should, with the counsel and judgment of the metropolitan and comprovincial bishops, give his assent and support to the wiser party. The bishop- or abbot-elect was to receive the “ regalia ” from him “ per septrum,” and was to fulfil the lawful obligations which he owed for this. In the other parts of the Empire the bishop or abbot, within six months of his consecration, was to receive the “ regalia ” from the emperor “ per sceptrum,” and was to discharge all his lawful obligations ; the only exception being in the case of all which belonged to the Roman Church.¹

If we endeavour to estimate the main character of the settlement which terminated the conflict of fifty years between the Spiritual and the Temporal Powers with respect to the appointment of bishops and abbots, we may say that it is clear that in the main it represents the triumph of that mediating tendency whose development we have endeavoured to trace, and not the complete victory of the extremists of either party. When, however, we attempt to interpret the principles of the settlement in detail, we have need of great caution, but we may perhaps reasonably make the following observations. The emperor, in surrendering the investiture with ring and staff, and in admitting the right of free election and consecration, made it plain that he made no claim to bestow the spiritual office and authority, and that he recognised the rights of the diocese and the province. On the other hand, the Church recognised the justice of his claim to give or to withhold the feudal possessions and authority of the bishops and abbots as exercising temporal lordship. In the provision that the election should take place in his presence, the Church recognised that the emperor could not be excluded from all part in the election to the great ecclesiastical offices, in which, indeed, on the canonical principles, the laity had their just and lawful place. In the provision for the determination of disputed elections, the emperor was no doubt to be guided by the advice and judgment of the metropolitan and the comprovincial bishops ; but the Church admitted that the emperor was entitled to an important part in such decisions. Probably the most important concession of the Church was contained in the provision that the bishop, or abbot, elect should ask for and receive the “ regalia ” from the emperor before his consecration ; for this probably meant that in the case of an insuperable objection to the elected person by the emperor, the whole matter could be reconsidered. On the other hand, the most important concession of the emperor was that which dealt with his relation to the bishoprics and abbeys outside of the German kingdom. Here he made no claim to a part in the election, and accepted the provision that the bishop or abbot was to apply for the “ regalia ” after the consecration—that is, after the whole process of appointment was completed ; and this no doubt meant a very great change in the relation of the emperor to the Italian bishoprics.

We have reached the end of our consideration of the first aspect of the great conflict between the Empire and the Papacy, but in the course of this conflict other questions had arisen, and other claims had been made which represent a profounder aspect of the relations of the Spiritual and Temporal Powers in the Middle Ages, and we must now turn to the consideration of these.

PART HL

THE POLITICAL CONFLICT OF PAPACY AND EMPIRE.

CHAPTER I.

THE POSITION AND CLAIMS OF GREGORY VH.

IN the first volume of this work we have set out what appears to us to be a reasonable interpretation of the relations of the Spiritual and Temporal Powers in the ninth century, and have urged that these represent in substance the acceptance of the principles set out by Pope Gelasius I. in the fifth century—that is, that the two authorities are each divine, and are each supreme within their own spheres, that neither can claim authority over the other with respect to its specific functions. It is quite true, and we have endeavoured to recognise it frankly, and

to illustrate it sufficiently, that in actual fact the spheres of the two authorities were not in the ninth century thus clearly separate, but that we find each intervening from time to time in matters which belonged to the other. It does not, however, appear to us that this really affected, in the minds of the men of that time, the validity of their general judgment, or the sincerity of their conviction that the Spiritual and the Temporal Powers were autonomous in their relations to each other.

It is, however, true, and we have laid some stress upon it, that in the ninth-century restatements of the Gelasian principles we find some important modifications and additions. Where Gelasius had said that the burden laid upon the priest is heavier than that which was laid upon the king, for in the divine judgment he will have to give account for the soul of the king, Jonas of Orleans calls the person of the priest " *praestantior*," for he is responsible to see that the king does his duty even in the discharge of his office; and Hincmar of Rheims says that the " *dignitas* " of the bishop is greater than that of the king, for it is the bishop who consecrates the king. But the most fundamental modification of the Gelasian phrases was made by Jonas of Orleans and the bishops in the ' *Relatio* ' of 829, where they say that the two great offices of the priest and the king are offices not in the world, as Gelasius had said, but in the universal Church, which is the Body of Christ. How far this modification was conscious and deliberate we cannot say, but it is none the less important. It may reasonably be contrasted with the phrases of Optatus of Alilevis, when he rebukes the Donatists for their want of respect for the Empire: the Church, he says, is within the commonwealth—that is, the Roman Empire—and not the empire within the Church.¹

This conception is indeed one of far-reaching importance, and is characteristic of the whole political and ecclesiastical theory of the Middle Ages. In our second volume we have cited a passage from Stephen of Tournai, one of the most eminent canonists of the later years of the twelfth century, which represents this principle very effectively. In the one Commonwealth, he says, and under the one king, there are two peoples, two modes of life, two authorities: the commonwealth is the Church, the King is Christ, the two peoples are the two orders in the Church—that is, the clergy and the laity; the two modes of life are the spiritual and the carnal; the two authorities are the priesthood and the kingship (" *sacerdotium et regnum* "), the twofold " *iurisdictio* " is the divine law and the human: give to each its due, and all things will be brought into harmony.²

There is only one Commonwealth, that is the Church of Christ, and of this Commonwealth Christ Himself is the King; but He commits his authority to two persons, to the priest and the king, and not to one alone. There is no question in Stephen's mind of an authority of the one over the other, within its own sphere, nor does he even suggest any question of the priority of the one over the other. And yet it would seem that when the commonwealth was conceived of as the Church, it would be difficult to avoid this question completely. At any rate, even in the ninth century, Jonas of Orleans and Hincmar of Rheims anticipated in some measure the actual form which the question was to take. Jonas, as we have seen, calls the person of the priest " *praestantior*," for he is responsible to see that the king does his duty; and Hincmar calls the " *dignitas* " of the bishop greater than that of the king, for the bishop consecrates the king to his office. It is in these two phrases that we may see the first germs of those claims of the Church and the Papacy which we have now to examine.

In the first part of this volume we have endeavoured to set out briefly some illustrations of the conception of the superiority of the Spiritual over the Temporal Power, and of the conception that it had some authority in determining the claim to secular authority. The most significant phrase is perhaps that of Rodolphus Glaber, writing towards the end of the first half of the eleventh century, when he says that no one can be recognised as emperor who has not been chosen by the Pope as suitable in character, and unless he has received from him the tokens of empire.¹ A little later we find the reforming Popes and their friends using phrases whose precise meaning is indeed difficult to determine, but which are at least very significant. Pope Leo IX., in a letter to the Patriarch of Constantinople, in which he maintains the authority

of the Roman See over all Churches, also urges that the Roman See has an earthly as well as a heavenly empire, that the Roman See has a royal priesthood, and he confirms this by a reference to the " Donation of Constantine." ¹ Unfortunately, he does not indicate clearly the meaning which he attached to its phrases. In the first volume we have set out the reasons which have convinced us that originally, and in the ninth century, the political authority referred to was understood to relate to the papal claims on the exarchate of Ravenna, and the other Byzantine territories in Italy.² Whether Leo IX. understood its phrases in this sense, or in a more general one, is not clear.

A few years later again we find Peter Damian, as we have already seen, using phrases whose significance it is very difficult to determine. He recognises indeed very explicitly that the royal power derives its authority from God Himself, and he distinguishes very emphatically the nature of the functions of the king and the priest; and when he refers to the two swords, he speaks of them as belonging, the one to the king and the other to the priest, and does not suggest the doctrine sometimes maintained later, that both strictly speaking belonged to the priest.⁸ On the other hand, in a letter

to Henry IV., exhorting him to help the Roman See against the antipope Cadalius, he says that the king is to be respected when he obeys the Creator ; but when he goes against the divine commands he is lawfully held in contempt by his subjects. In another place he speaks of the Pope as the king of kings and prince of emperors, who excels all living beings in honour and dignity ; and in another place still he speaks of the Roman Church as having been founded by Christ, who committed to Peter (" beato eternal vital clavigero") the laws both of the earthly and heavenly empire, and this is repeated in another work, where he speaks of Christ as having committed to Peter the laws both of heaven and of earth.¹ We have already considered these phrases in Part I. of the volume, and we have dealt with the interpretation of some of them by the canonists of the twelfth century in volume ii.,² and we can only repeat that it is very difficult to say what Peter Damian may have meant by them.

Another of the most eminent of the reforming Churchmen of the time used phrases which are noticeable as indicating the rationale of the later claim of the spiritual power. Cardinal Humbert recognises and states very emphatically the distinction of the spheres of the two orders : the clergy may not interfere in secular matters, any more than the laity in ecclesiastical affairs. In another passage, however, he says that, if we are to find a just comparison between the priestly

and the royal dignities, we may say that the priesthood resembles the soul, and the kingdom the body, for they love each other, and have need of each other. As the soul is greater than the body and commands the body, so is the priesthood in regard to kingship ; and thus, that all things may be rightly ordered, the priesthood like the soul admonishes men what things are to be done ; as the king should follow the ecclesiastic, so the lay people should follow the king ; the priest should teach the people, the king should rule them.¹

We do not feel that it is possible to say exactly what Peter Damian and Humbert and other reforming Churchmen may have understood by such phrases, we doubt indeed whether they attached to them any clearly defined meaning. They must not therefore be considered unimportant and insignificant ; and it only needed some new conditions to bring out their significance, perhaps we should rather say, new conditions and a more determined temper.

The new conditions developed with that great change which we have discussed in the last section of this volume. Till the death of Henry III. it is clear that in the main the reforming party in the Church had the general and hearty support of the imperial authority, but with his death this was changed. During the minority of Henry IV. the authority of the emperor became involved in the most glaring abuses, and when Henry IV. himself took over the reins of government this was only confirmed.

It is not our part here to discuss the truth of the charges which were brought against Henry's personal character—the statements of his political and ecclesiastical enemies must be received with caution. But it does not admit of dispute that both in his private conduct and in his ecclesiastical actions he gave serious cause of offence. It may suffice here to mention the

great scandal which was caused when, in 1069, Henry made public his desire to divorce his wife. In a letter of Archbishop Siegfried of Mainz to Pope Alexander II. he describes the indignation with which this had been received.¹ In another letter of the same archbishop we have a good example of the relation of Henry to the ecclesiastical scandals of the time. Siegfried had been forbidden by Alexander H. to consecrate the bishop-designate of Constance, on the ground that he was charged with simony ; and he reports that Henry was much incensed with him on this account, and that he was afraid that Henry would take further measures unless the Pope protected him against the royal anger.² Indeed, if we accept the statements of Henry IV.'s own letter to Gregory VII. of 1073, it would seem evident that he was conscious, or allowed himself to be represented as being conscious, of grave faults, both personal and ecclesiastical.³

When Hildebrand was elected to the Papacy in 1073, as Gregory VII., the division between the reforming party in the Church, and the authorities of the State in the Empire, and also in France, was already very marked ; and while it is true that for a considerable time Hildebrand had exercised a great influence in determining the policy of the Papacy, it is also true to say that with his formal accession to power this policy became clearer and more determined. Since the Council of Sutri the Popes had steadily maintained the policy of reformation, and especially with regard to two questions—one, with which we are not here directly concerned, the marriage of the clergy, the other the buying and selling of Church offices or simony. Hitherto this had been expressed mainly under the terms of stringent proceedings against the clergy who were guilty of simoniacal practices, but with the accession of Gregory VII. the Papacy turned its attack upon the secular authorities themselves as being, in its judgment, mainly responsible for this condition of things.

It has been sometimes maintained or suggested that this was due to some more or less definite and conscious intention to establish the power of the Papacy as supreme over the Temporal Power: we doubt whether there are sufficient grounds upon which to found any such judgment, and we think that it would be wiser for the historian to confine himself to the observation of the actual development of the new policy of the Papacy. It is, however, true that the new policy developed with great rapidity ; that indeed from the first year of his pontificate Gregory VII. showed that he was prepared to use every power which the Papacy had ever claimed, or exercised, to secure reform.

The new policy, if we may call it such, took shape first in relation to the French monarchy ; it was not till 1076 that the breach with Henry IV. took place. We must therefore begin by observing the relations of Gregory VII. and France during the first years of his pontificate.

In an earlier chapter we have dealt with the stringent measures which Pope Leo IX. had taken against simony in the French Church.¹ When Hildebrand became Pope he found the evil still rampant, and in his judgment it was the king himself, Philip I., who was the real source of the evil. In December 1073, the year of his accession, Gregory VII. wrote to the Bishop of Chalons a letter, in which he denounces Philip as being among all the princes of that time the greatest offender against the true order and freedom of the Church, and as being especially guilty of the most outrageous simony. He expressly lays the blame upon him, for he speaks of the French kingdom itself as singular in its piety and devotion to the Roman Church. He does not, however, confine himself to denouncing the wickedness of the king, but threatens, in the plainest terms, that, if Philip would not amend his evil ways, he would lay the kingdom under a general excommunication, and thus compel the French people to withdraw their obedience from the king.²

We have indeed here startling evidence of a new policy, of the fact that the Roman See was now under the control of a Pontiff who was prepared to use every weapon at his disposal in order to secure a complete reform in the conditions of the Church. The policy and determination which are manifest in this letter were further developed in the succeeding years. In September 1074, Gregory VII. wrote to the Archbishops of Rheims, of Sens, of Bordeaux, to the Bishop of Chartres and the other bishops of France, reproving them for their failure to resist the wickedness of the king, and bade them as one body to

remonstrate with him, and to denounce to him the wickedness of his deeds. If he would not listen to them they were to warn him that he would not escape the apostolical sword, and they were, in obedience to Rome, to separate themselves from his obedience and communion, and to interdict the public performance of all divine service throughout France ; and finally, if Philip would not even then repent, he desired that every one should know that he would leave nothing undone to deprive him of the French kingdom.¹

In November of the same year Gregory wrote to William the Count of Poitou, and exhorted him to remonstrate with Philip on his iniquities, and more especially with regard to his conduct in plundering Italian merchants in France, and told him that, while he was prepared to accept his repentance, if he did not amend his evil ways he would excommunicate him and all those who continued to render him obedience. Again, in December of the same year he wrote to Manasses, the Archbishop of Rheims, on the same matter, denouncing the new and unheard-of crime of the king, that he plundered the merchants of Italy and other countries, and warns him that if the king persisted in these crimes he must expect to have the Roman Church and the Pope as his determined enemies. In the Council held at Rome in February 1075, he decreed that, unless Philip gave security for his amendment to the papal envoys who were to be sent to France, he was to be held excommunicate.¹

The terms of this letter of Gregory VII. certainly mark the appearance both of a new attitude of the Papacy towards the Temporal Powers, the determination to deal directly, not merely with the clergy who were guilty of simony, but with the secular authorities, when they were responsible for this, and also the assertion of the right of the Papacy both to excommunicate and to depose princes. It was not till later that a reasoned justification of these claims was set out by Gregory, but it is noticeable that in a letter of 1074 to Sancho, King of Aragon, he asserts that Christ had made Peter prince over the kingdoms of the world ; and in a document which has been dated as belonging to the year 1075, and contains a summary and statement of the nature of papal authority, we find an explicit assertion of the principle that the Pope can depose emperors, and release the subjects of wicked rulers from their allegiance.¹ There is indeed no doubt that the Church had constantly claimed a full spiritual authority over kings as much as over lesser men, but the conception that this involved the right to depose kings was a somewhat different matter. In our first volume we have cited certain passages which indicate that the conception was not unknown, and had been at least sometimes recognised in the ninth century ; but the determined phrases of Gregory VII. certainly seem to represent a new confidence as well as a new policy.²

If the new policy became apparent first in the relations of the Papacy to the French monarchy, it was in its relations with the Empire that it was developed. We do not pretend here to relate the history of the great conflict between Gregory VII. and Henry IV. in detail, but we must follow its course, so far as is necessary to understand the principles which were at issue. We have already mentioned the grave scandal caused by Henry IV.'s proposal in 1069 to divorce his wife, and by his connivance with simony. When Hildebrand succeeded to the Papacy in 1073, Henry IV. had not been personally and explicitly excommunicated ; but he had refused or neglected to separate himself from the society of excommunicated persons, and was therefore indirectly under the ban of the Church. It should, however, be observed that Hildebrand was careful to avoid giving offence to Henry IV., and seems to have recognised his claim to be consulted before his actual consecration.¹

Gregory's attitude to Henry on his accession to the Papal See is well illustrated by a letter to Godfrey, Duke of Lorraine. He assures him that no one could desire Henry's wellbeing more than he does, and that he would greatly rejoice if Henry would follow his admonitions and counsels in maintaining justice ; but he also says very plainly that no respect of persons would withhold him from exercising justice upon him who held God in contempt.² Again, in a letter of September 1073, to Anselm, the Bishop-elect of Lucca, he bids him not to receive investiture

from Henry until he had done satisfaction to God for his communion with excommunicated persons, and had made his peace with the Papacy.³

Gregory's accession to power was almost simultaneous with the outbreak of the great revolt of the Saxons against Henry IV. In the third volume of the work we have dealt with its significance in relation to the history of the development of political ideas. We cannot here repeat what we have said, nor can we discuss in detail the circumstances, but it is necessary to bear in mind the political situation in Germany,

as it doubtless contributed much to the development of the papal position. It was no doubt, in part at least, the serious danger of the revolt which induced Henry to express himself 'so humbly and penitently as he did in that letter of the year

1073, which we have already cited. He acknowledged very humbly that he had misused his powers, and that he had been guilty of simony, and he begged Gregory to counsel him, and promised obedience.¹ In a very important letter, written in December 1073 to the Archbishop of Magdeburg and the other Saxon princes who were in revolt against Henry, we have the first important example of Gregory's intervention between Henry and his subjects. He laments the hostilities which had arisen between them, and the consequent devastation of Germany, and was evidently genuinely desirous to restore peace ; but it is noteworthy that from the first he assumed towards them and the king a position of authority as well as of mediation. He tells them that he has entreated and admonished the king, in the name of the Apostles Peter and Paul, to abstain from hostilities until he could send envoys to inquire into the causes of the conflict and to restore peace ; and he admonishes them to observe the same truce ; he assures them that he would endeavour to establish justice, and that he would, without fear or respect of persons, give the favour and the protection of the apostolic authority to that party which had suffered injury and injustice.² The tone of the letter is courteous but also authoritative.

It would seem that Henry had been unreconciled to the Church, but from a letter of Gregory to the Empress Agnes, the mother of Henry IV., written in June 1074, it is clear that by this time Henry had been restored to the communion of the Church, and thus a grave danger to his kingdom had been, as Gregory says, averted ; for Gregory could not meet Henry while he was outside of this communion, and his relations to his subjects were very difficult.¹ In a letter written by him to Henry in December 1074, we have a statement, friendly but severe, in which he warns him that he could only hold

his kingdom rightly if he used his power for the restoration and defence of Christ's Church.¹ In another letter of the same time, we seem to have an expression of Gregory's feelings towards Henry when he was completely assured of his repentance and reformation. He expresses his constant affection for Henry, laments that men sow discord between them, and urges him to turn away his ears from such men. He tells Henry that his own desire was to accompany an army to the sepulchre of the Lord, and to bring help to the oriental Christians ; and that if by God's help he was able to do this, he desired to leave the Church in Henry's care, that he might guard it as his mother, and defend its honour. He concludes by praying that God would absolve him from all his sins, and lead him in the way of His commandments, and bring him to eternal life.² In a letter written to Henry after his victory over the Saxons on the Unstrut, he expresses his joy that the divine judgment should have given him this triumph over the Saxons, who were unjustly resisting him, while he laments that so much Christian blood should have been shed; and he assures him that he was willing to open the Church to him, and to receive him as one who was at the same time lord and brother and son, on the condition that he would consult his own salvation and give glory and honour to God.³

In January of 1076, however, we find that the relations between Gregory and Henry were seriously strained. On the 5th of that month he exhorted him again to separate himself from the excommunicated persons, and complained of his conduct in bestowing the bishoprics of Fermo and Spoleto on persons who were not even known to Gregory.¹ It was only a few weeks later that the final rupture took place, and Gregory VII. and Henry IV. were arrayed in open war against each other. The circumstances of this are set out by Lambert of Hersfeld, by Gregory

VII., and by Bruno. According to Lambert the papal legates appeared in Germany, and summoned Henry to appear at a Council to be held in Rome in the second week of Lent to answer to the charges brought against him, and declared that, if he failed to do this, he would without further delay be cut off from the Church by this apostolic sentence. Henry was profoundly moved by this announcement, and at once, dismissing the legates with contumely, summoned all the bishops and abbots of the kingdom to meet at Worms on Septuagesima Sunday, to consider the deposition of Gregory, for this was necessary for the safety of himself and the kingdom. Gregory, in his letter to the faithful in Germany of August 1, 1076, after a long account of his relations with Henry IV., relates that he had written to him warning him that if he would not separate himself from the society of excommunicated persons he would have to reckon him as one separated from the Church, and that Henry, indignant at being rebuked, had persuaded many of the bishops in Germany and Italy to renounce their obedience to the Apostolic See.¹

The Council met on the appointed day, and its action will be best understood by considering the letters which the bishops themselves and Henry IV. issued announcing its decisions. We cannot here discuss all the points raised in the letter of the bishops, but the most noteworthy are the following. They complained that he had stirred up strife in all the churches, setting the people against the bishops and clergy ; that he had arrogated to himself the right of sanctioning or annulling the appointment of bishops ; that he had forbidden them to bind or loose any one whose offence had been in any way brought before him. They suggested that his election to the Papacy had been irregular, and contrary to the decree of Pope Nicholas II. ; and they charged him with a scandalous familiarity with some woman and with allowing her to interfere in ecclesiastical affairs. They concluded, therefore, that they would no longer recognise him as Pope.²

Henry, in his letter to Gregory, says that he had attacked the bishops who were his friends, and then had turned upon the head himself, and had threatened to take from him his soul and his kingdom. He had in consequence summoned a general meeting of all the chief men of the kingdom, and by them it had been decided that Gregory could no longer be recognised as Pope. Henry had assented to their judgment, repudiates Gregory's claim to the Papacy, and bids him descend from the see of that city of Rome, of which by the grant of God and the sworn assent of the Romans he was Patrician.¹ In his letter to the Roman people Henry transmits to them the previous letter, and urges them to rise against Gregory and compel him to descend from the papal throne, so that another Pope might be appointed by Henry, with the consent of all the bishops and of the Roman citizens, who might heal the wounds of the Church.¹

It is perhaps deserving of notice that the letter of the bishops lays stress in the main upon alleged ecclesiastical grievances, and the alleged irregularity of Gregory's election ; while Henry deals mainly with the threat to excommunicate him, and the alleged threat to depose him. Whether he means that this was implied in the threat of excommunication, which is all that is mentioned by Lambert, or whether there had been some other statement by Gregory, as may be meant by Henry's words in his letter to him, " *scilicet ut tuis verbis utar,*" we cannot tell. Henry clearly alleges that Gregory had threatened to depose him. It is beyond the scope of this work to deal with the question how far the contention of the bishops, that Gregory was claiming new powers over them, was well founded or not. It is no doubt true that the Papacy in its attempt to reform the conditions of the northern churches was extending its activity to an immense extent, but how far this represented innovations in principle is another matter.

We are concerned here with the question of the relations of the Spiritual and Temporal powers, and we must turn from the proceedings of the Council of Worms to those of Gregory in the Council which met in Rome in February. In this Council, and under the terms of an invocation addressed to St Peter, Gregory solemnly excommunicated Henry, deposed him from the kingdoms of Germany and Italy, and absolved all his subjects from their oath of allegiance. He did this on the ground that Henry had refused to obey the Lord, had joined himself to those who were excommunicated, and had attempted

to divide the Church ; and he claimed this authority in the name of Peter, to whom Christ had given the power of binding and loosing in heaven and upon earth.¹

The conflict had at last become open war, and the greatest Temporal power in Europe was arrayed against the Spiritual power of Rome. We must now examine the documents in which Henry and Gregory justified their action. The first important statement which we must consider is contained in a letter written by Henry to Gregory on March 27, 1076, presumably on hearing the news of his excommunication and deposition at the Council of Rome in February. He addresses his letter to him not as Pope but as the false monk Hildebrand, and accuses him first of having overturned all due order in the Church and treated the bishops as his slaves ; he had, he says, patiently endured all this, but Hildebrand, mistaking his humility for fear, had at last turned upon the royal authority which had been given him by God, and had threatened to take it away from him, as though Henry had received the kingdom from him. The tradition of the holy Fathers had

taught that the anointed king could be judged only by God, and could not be deposed for any crime except heresy. He therefore, and all his bishops, bids Hildebrand descend from the apostolic throne and make way for another.¹ The letter sets out two very important principles or claims : the first, that Henry had been appointed by God, and was subject only to the judgment of God, and could be deposed only if he forsook the faith ; the second, that the king and the bishops had the right to judge and depose the Pope : but this is more vaguely put, and the grounds and conditions of the claim are not expressly stated.

Henry's position is more carefully set out in another document, which is thought to be a summons addressed by him to the bishops to attend a council to be held at Worms at Whitsuntide. In this he states with some care the principle of the separation of the two authorities, the " regnum " and the " sacerdotium," which Christ had established in His Church under the type of the two swords, and he describes their respective functions. The " sacerdotium " is to secure obedience to the king, after God, and the " regnum " is to conquer the external enemies of Christ, and to compel men within the Church to obey the " sacerdotium." It was this order which Hildebrand was striving to overthrow, and in doing this was really destroying the position and authority of both powers. Incidentally he denies that God had called Hildebrand to the " sacerdotium." ¹

The position of Hildebrand was set out by him in reasoned terms in a letter which he sent to Hermann, the Bishop of Metz, in August 1076. He addressed himself primarily to the contention of those who maintained that it was not proper to excommunicate a king. He cites various authorities and historical precedents to show that this was lawful, and that it had been done ; and then argues that the conception that any man could be exempt from ecclesiastical jurisdiction was intrinsically absurd, for it would mean that he was outside of the Church, and alien from Christ. In

arguing that it was lawful to excommunicate kings, he cites the alleged deposition of the last of the Merovingian Kings of France by Pope Zacharias, and the words of a letter of Gregory the Great, in which he had threatened kings who resisted his judgment not only with excommunication, but also with the loss of their office. It is to these presumably that he returns when he asks why the Apostolic See, which judges spiritual matters in virtue of the authority committed to it by God, should not also judge of temporal things. Some people had suggested that the royal dignity was greater than that of the bishop ; he indignantly protests that the truth was just the opposite, and that this was evident from its origin : king- ship had its bpginnings in human pride, while the bishop's office was created by God. Finally, he stringently forbade any one to absolve Henry: this must be left to the papal judgment.¹

In a letter addressed to the faithful in Germany on September 3, Gregory set out the position, and the power which he claimed, with some important additions. He directs them to the decree of the Council which had ex communicated Henry for a statement of the grounds on which this action had been taken, and he bids them understand that Henry had been not only excommunicated, but also deposed, and that all his people had been absolved from their oath

of allegiance. He desires them to show him mercy if he repented, especially for the sake of his father and mother ; but Henry must learn that the Church was not his handmaid, but was set over him. If he would not repent another was to be elected to the kingdom who would promise to observe what Gregory had enjoined, and to do whatever should seem necessary for the Christian religion and the welfare of the whole empire. He requires them to report to him the person selected and his character, in order that he might confirm their election and the new order, as the holy Fathers had done. Finally, he refers to some oath which had been made to the Empress Agnes, and

requires them, if they had determined to remove her son from the kingdom, to consult her and himself about the person selected to succeed him.¹

If we now endeavour to sum up the principles and claims which are set out in these documents, we shall recognise that the conflict arose immediately and directly out of the claim of Gregory to exercise spiritual jurisdiction even over the king. It was the summons to Henry, to answer in Rome for the ecclesiastical offences of which he was accused, which was the immediate cause of the open breach. The first and fundamental contention of Gregory was that even the king was subject to the ecclesiastical censures of the Church, and even, if need should arise, to excommunication. Whether Gregory had formally threatened to depose Henry is not

clear ; but Henry understood that he had done this, whether implicitly or explicitly. He accordingly set up the counterclaim that he and the bishops had the power of sitting in judgment upon the Pope, and, acting upon this claim, they declared the deposition of Gregory at Worms. Gregory replied by excommunicating and formally deposing Henry as a rebel against God and the Church, and justified this action by various arguments and precedents. Henry's reply to this was twofold : first, the claim that the king was subject only to the judgment of God, and could not be deposed except for heresy ; and second, he appealed to the Gelasian tradition of the separation and autonomy of the two powers. Gregory, it should be observed, in the letter to Hermann of Metz, does not explicitly deny this, but reiterates the claim to spiritual authority over the king, and seems to assume that this carried with it the power of deposition ; and he puts forward, in vague but significant phrases, the contention that, if the Holy See could judge spiritual matters, it could also judge secular things. With special reference to the actual situation, he also claimed the right to consider and approve the person whom the German people should elect to take Henry's place.

Such, then, were the first stages of the great conflict, and the nature of the claims as they were first set out by the two parties. We must now consider briefly the development of the historical situation, and the further development of the principles which had been put forward.

It might have seemed as though Henry was able to command the allegiance of Germany, and even of the German bishops, in his quarrel with Gregory, but in a short time it became evident that this was not the case. The victory of the Unstrut in 1075 seemed to have crushed the revolt of the Saxons and to have secured Henry's supremacy in Germany ; but in the course of 1070 a new and more formidable rising broke out, and in a short time the political situation was completely transformed.

The Saxons and Suabians broke into open revolt, and Henry was obliged to bow to the storm. The accounts given by the historians differ in detail, but they agree in some of the most important parts. Henry was compelled to make his submission to Gregory, and the princes determined that if he were not absolved within a year he would cease to be King, and they invited the Pope to come to Germany to put an end to the conflict.¹ Henry's letter to Gregory VII. and to the German Princes declaring his submission are expressed in the most explicit terms.²

Henry accepted the terms proposed by the revolting princes, and retired to Spire, but seeing the great importance of being absolved before the anniversary of his excommunication, determined to set out for Italy, to present himself before Gregory and to obtain absolution. Gregory at the same time had set out from Rome on his journey to Germany, and had reached Canossa when Henry arrived. We need not relate the story of Henry standing barefoot before

the gate of Canossa, but the conditions of his absolution are of the highest importance. The Register of Gregory VII. contains what professes to be a record of the promises which Henry made on 28th January 1077. In this Henry undertook, with reference to the complaints which had been brought against him by the archbishops and bishops and other princes of the German kingdom, either to do justice according to the judgment of the Pope, or to make peace according to his counsel, within the term which the Pope should appoint, unless he or the Pope should be prevented by a "certum impedimentum." The account given by Lambert of the conditions of absolution is of little historical value, but is important as illustrating the standpoint of some of Henry's enemies. Henry is represented as promising that he would appear on a day and at a place to be appointed by the Pope, at a council of the German princes, and would then reply to the charges brought against him; that the Pope should, if it seemed well, act as judge, and that Henry should, according to his sentence, either retain the kingdom, if he were able to purge himself of the charges brought against him, or should lose it if the crimes were proved, and he were declared unworthy, according to the ecclesiastical laws, of the regal dignity. If he were confirmed in the kingdom, he promised that he would be subject and obedient to the Pope, and would manfully help him in correcting those evil customs which had long existed in the kingdom contrary to the ecclesiastical laws. If Henry did not fulfil these promises, the absolution was to be void, and the princes would be entitled to elect another king.¹

It is evident that Lambert's account not only contains more detail, but that it is more strongly expressed; the substance, however, is not very different, for in the document contained in the Register, Henry promises to submit to his judgment or to follow his counsel. We must compare the statement of the circumstances, contained in the letter which Gregory sent to the German princes announcing Henry's submission and the fact that he had absolved him from the sentence of excommunication.²

Henry's submission at Canossa was apparently complete, but the whole situation only became more complex. Gregory VII. says explicitly in the declaration of the excommunication of Henry in 1080, that while he had absolved Henry at Canossa, he had not restored him to the kingdom, and that his action was determined by his desire for justice or peace between him and the bishops and princes who had been in revolt. It was these bishops and princes who, hearing that Henry was not keeping the promises which he had made to Gregory, and despairing of him, elected Rudolph as king without consulting him ("sine meo consilio vobis testibus, elegerunt sibi Rodulfum ducem in regem").¹ He reasserts this emphatically in a letter which is undated, but is thought to have been written between 1081 and 1084.²

It seems therefore clear that the action of the German princes who elected Rudolph at Forcheim in March 1077 was taken without the advice of the Pope, and it soon became clear that Germany was completely divided, and that the election of Rudolph was only accepted by a section of the nation. Towards the end of May in the same year (1077) we find Gregory addressing a letter to the faithful in Germany, in which he says that both the kings had asked the help of the Roman See, and that he desired to go to Germany, and with their consent, to decide the dispute, and to render his help to that one that of the two whose cause should appear to be just. If either of the kings were to refuse him the necessary safeconduct, he should be excommunicated, and he cites the words of Gregory the Great, that those kings who acted against the command of the Apostolic See were to lose their dignity, and repeats the words which he had used in his letter to Hermann of Metz, that if the See of Peter judges spiritual matters, much more could it judge earthly and secular matters. He concludes by assuring them that he had made no promise to either king that he would do anything except that which was in accordance with justice.³

Gregory's letter of instruction to his legates of the same date sets out the same principles, but in more detail. They are to demand of both the kings safe-conduct for him to Germany, for he desires to consider the case between them with the counsel of the German clergy and laity who fear God, and to declare to which party justice belonged. They know that it is the duty of

the Apostolic See to decide the graver affairs of the Church, and this matter is so weighty and dangerous that if he were to neglect it, the whole Church would suffer the most grievous injury. If, therefore, either of the kings were to resist his purpose and their mission, they were to deprive him of the kingdom, and to cut off him and his supporters from the communion of the Church, and they were to call together a council of the clergy and laity to confirm him who obeyed Gregory's command in the kingdom, and to enjoin upon all, both clergy and laity, that they should faithfully serve him.¹

In the Register of Gregory VII. we have several documents which indicate the development of the situation in the year 1078. The "Acta" of a Council held at Rome from February 27 to March 3 report that it was determined that, in view of the danger caused to the Church by the grave dissensions in Germany, legates should be sent to hold a council of all religious men, lay and clerical, with whose help they might either bring about peace or might learn to which side justice belonged, and give to it the help of the Apostolic authority.¹ A letter by Gregory, addressed to the Germans of all ranks, announces the decision of the Council, and urges them all to strive for peace.² On July 1 Gregory wrote again to all clergy and laity in Germany, telling them of the Council which was to be held in Germany in the presence of his legates to decide between Henry and Rudolph.³

In February 1079 the envoys both of Henry and Rudolph appeared at a Council in Rome, and the Register contains the undertakings which they made for their masters. The envoys of Henry swore that before Ascension Day, unless hindered by lawful cause, they would come to conduct the papal legates to Germany, and that Henry would obey in all things according to justice and their judgment. The envoys of Rudolph swore that if the Council was held in Germany, according to the Pope's injunction, Rudolph would attend himself, or by his bishops and other faithful men, and that he would be prepared to accept the judgment of the Roman Church with regard to the kingdom ; that he would put no obstacle in the way of the meeting of the council, and would do what he could to enable the papal legates to attend.¹

The Council accordingly resolved to send legates to Germany who should call together an assembly both of the clergy and laity, which should either make peace or declare the canonical judgment upon those who were the cause of strife, and declared that any person obstructing the work of the legates, or making war while the negotiations were being conducted, should be excommunicated.²

It is to this decision that Gregory refers, in a letter of the same month addressed to Rudolph of Suabia. He assures him that, though he had been constantly solicited by the envoys of Henry IV. to espouse his cause, he was firmly resolved to discover and to maintain that which was just. In another letter to Rudolph and the bishops and princes of his party, he exhorts them to stand fast for the truth of religion and for their own liberty ; but he refers them to his legates and letters for an account of the measures which had been taken in the Council at Rome for the establishment of peace in the German kingdom.¹ The second of these letters is not

easy to reconcile with Gregory's protestation of impartiality.¹ Two letters written at the beginning of October in the same year seem to illustrate very clearly the position of Gregory. One is addressed to his legates in Germany, and says that he had received complaints that they were not carrying out his instructions ; and, though he gave no credence to these complaints, he warns them of the need of the utmost caution, that they might give no grounds of suspicion that they favoured one party more than another, for he was determined to follow no other end than that of justice. It is very significant that he strictly forbids them to declare any judgment upon the archbishops or bishops who were charged with having received lay investiture, and that they were to let him know at once if the king (Henry IV.) came to an agreement with them about summoning a meeting for the restoration of peace in the kingdom.² The other is

addressed to the faithful in Germany. He had heard, he says, complaints that he had behaved "seculari levitate," but he assures them that no one had suffered more than himself. Almost

all the lay people were on the side of Henry IV., and accused him of harshness and want of “ pietas ” towards him. He had hitherto resisted this pressure, and had not, except so far as equity and justice demanded, inclined to either side. If his legates had done otherwise he was grieved ; but they had done this only under violent coercion, or had been deceived.¹

It was in March 1080 that the breach between Gregory VII. and Henry IV. was completed, and that Gregory again excommunicated and deposed Henry and acknowledged Rudolph as king. Gregory announced, this in a declaration to a Council at Rome, in which he sums up the events and his own actions since Canossa. He declared that while he had absolved Henry at Canossa, he had not restored him to the kingdom, but was resolved to do justice or to make peace between him and those who had revolted against him. The election of Rudolph was carried out without his advice, but he had resisted the prayers of Henry that he should help him against Rudolph. Finally, both kings had asked him to do justice, and he had decreed that a meeting should be held in Germany to make peace or to determine to which party justice belonged ; and because he knew that the party which was in the wrong would try to hinder this meeting, he had excommunicated any one who attempted this. Henry and his supporters had prevented the meeting, and therefore, trusting in the judgment and mercy of God and the Blessed Virgin, he now excommunicated him and them, and in the name of God and the Council deposed Henry from the kingdoms of Germany and Italy, forbade all Christian men to obey him, and absolved them from the oath of obedience which they had taken or might in the future take. He solemnly granted that Rudolph should reign in the German kingdom to which the Germans had elected him ; and to all those who should faithfully obey him he gave absolution from their sins and the blessing of the Council in this life and the next. Finally, he exhorted the members of the Council to act so that all the world might know that, as they had power to bind and loose in heaven, so also they could take away and grant kingdoms, principalities, and all other possessions of men, according to men’s merits. Let the kings and princes of the world learn how great was their power, and fear to disobey the command of their Church.¹

It is very important to observe the principles represented in this statement. First, Gregory claims that he had authority to excommunicate and depose Henry for hindering the meeting to which he had promised to submit the question between him and Rudolph. Secondly, he claims authority to sanction the appointment of Rudolph to the German kingdom ; but it must be observed that he is careful to say that the Germans had elected him. Third, he associates the Council in Rome with himself in this action. Fourth, he urges upon the Council that they should make it clear that they have authority to grant and to take away all political authority in accordance with men’s deserts. These claims represent a considerable advance upon those which Gregory had made in 1076 : he had then excommunicated Henry for a definite and deliberate revolt against the Church, for presuming to judge and depose the Pope ; he now excommunicated and deposed Henry for refusing to accept the authority of the Pope in the determination of the political affairs of Germany. It must, however, be borne in mind that, as we have seen, and as Gregory is careful to recall, both parties in Germany had appealed to him to judge between them, and had sworn to accept his decision. The last clauses of Gregory’s declaration, however, it must be noted, set out in very large and sweeping terms the claim that the Church has a general power to give and to withdraw political authority.

The action of Gregory was followed almost at once by Henry, who summoned a Council at Brixen which decreed the deposition of Hildebrand from the papal throne. They justified this action by the allegation that his election had been secured by violence, and in contempt of the decree of Pope Nicholas, which required the assent of the emperor, and by the charge that he had subverted all the order of the Church and the peace of Empire. They then elected Guibert, the Archbishop of Ravenna, as Pope.¹

In February 1081, in a Council at Rome, Gregory renewed the excommunication of Henry and his supporters, and in March he set out in another letter addressed to Hermann, the Bishop of Metz, a detailed justification of his action. In this letter he goes over again much of

the ground which he had already traversed in his letter to Hermann of August 1076 ; but the principles are more fully drawn out and the conclusions more sharply stated. He begins by repudiating the contention that the Apostolic See could not excommunicate kings, and absolve their subjects from their allegiance, as being contrary to the authority of Scripture and the Fathers. He cites the words of our Lord giving to St Peter the power to bind and loose, both on earth and in heaven, and various passages from Gregory the Great and other writers, and asks how it can be maintained that he who has the power of opening and closing heaven has not the power of judging in the world. All earthly authority which has been created by man is subject to that authority which God Himself has created. In words which have often been quoted he urges the base and sinful origin of secular authority: kings and princes derive their origin from men, who in pride, rapine, perfidy, and murder, and under the guidance of the devil, aspired in blind and intolerable presumption to make themselves the lords of their equals.¹ It cannot be doubted that the priests of Christ are the fathers and masters of all the faithful. He urges the example of the humility of Constantine, who at the Council of Nice sat below the humblest of the bishops, saying that he could pass no judgment upon them, but called them Gods, and said they were not subject to his judgment, but rather he to theirs ; and he cites the words of Gelasius, in which he declared that the greater burden belonged to the priests, for they would have to give account in the day of judgment even for kings. It was in virtue of such authorities that various Popes had excommunicated or deposed kings and emperors in former times ; and he mentions particularly the alleged deposition of the Emperor Arcadius by Pope Innocent I., the deposition of the last of the Merovingians by Pope Zacharias I., and the excommunication of Theodosius by St Ambrose. Finally, he urges that any good Christian should be reckoned as a king rather than a wicked prince. There have been few kings who have been really religious, while St Peter has conferred upon his successors a perpetual sanctity. Those whom the Church calls to kingship or empire should be humble, should honour God, and administer justice.¹

The final breach between Gregory VII and Henry IV. had scarcely taken place, and Rudolph been formally recognised as king by Gregory, before a new situation was created by the death of Rudolph from wounds received at the battle of the Elster in October 1080. The standpoint of Gregory himself in view of the situation is clearly defined in the letter which he addressed, to Bishop Altmann of Passau in 1081. So far from abating his claims or lowering his demands, he rather expresses them more sharply and raises them still higher. He tells the bishop that on the death of Rudolph almost all those who were faithful to him besought him to receive Henry, who was prepared to make large concessions, into his favour. They urged that almost all the Italians were on his side, and that if Henry were to invade Italy Gregory could expect but little assistance from Germany. Gregory sets aside these fears and advice without hesitation : he had evidently no thought but that another king should be elected in Rudolph's place, and is more concerned that the person elected should be suitable, than occupied with the immediate danger. He urges that there should be no undue haste in electing a successor to Rudolph ; it was better that there should be some delay in the choice than that an unworthy or unsuitable person should be elected. The Church would not accept any one who would not prove obedient and serviceable to it. He then defines, in strict and significant phrases, the oath which he would require of the prince to be elected. He must swear that he would be faithful to St Peter and his vicar Pope Gregory, and that he would faithfully observe whatever command the Pope should impose upon him in the name of his true obedience. He must come to such an agreement with the Pope with respect to the ordering of the churches, with respect to the lands and revenues which the Emperor Constantine had given to the Church, and the churches and estates which others had bestowed upon the Apostolic See, that he would be free from the danger of sacrilege and the destruction of his own soul. On the first occasion when he should meet with the Pope, he must by his own hands become the soldier of St Peter and the Pope. Gregory leaves the details to be settled by the bishops, but insists upon the full and exact promise of obedience and fidelity.¹

These phrases represent a higher level of Gregory's claims— at least with respect to the German kingdom—than anything which we have so far seen ; for the last words of the oath which he demanded may perhaps be interpreted as meaning that the king was to acknowledge himself to be the vassal of the Eoman See. And even if it is uncertain whether they were intended to have so clearly defined a meaning as this, the whole oath represents a very extreme claim to obedience.

The negotiations between the two parties in Germany 'i'ere soon broken off, and Hermann of Salm was elected to be king by the opponents of Henry, and was crowned on December 26, 1081 We do not pursue the course of historical events from this time to the death of Gregory VII. in May 1085 ; for, though these years were crowded with great and dramatic events, no new principle emerged with regard to the relations between the Empire and the Papacy.

We have thus endeavoured to set out the nature of the principles and claims of Gregory VII. with regard to the relations of the Temporal and Spiritual powers, as they are represented in the historical events and in his own words ; but that we may estimate more completely their real and permanent significance, we must now examine the criticism and exposition of them in the literature of the time and of the years that followed.

CHAPTER n.

DISCUSSION OF THE ACTIONS AND CLAIMS OF GREGORY VH.—I.

WE have pointed out in earlier chapters that there are not wanting, even before the accession of Gregory VII. to the Papacy, occasional statements in the writings of the Churchmen of the reforming party which indicate the existence of the conception that the Church, or rather the Papacy, possessed an authority which was, in some sense, supreme over all secular authorities, but it is difficult to say what sense exactly these writers attached to the phrases which they used. With the accession of Gregory VII. all this changed ; as we have seen, he did not merely set out general theories, but embodied these theories in definite and precise action, or perhaps it would be better to say that he threatened and took action in which some general theory was implicit, and in and through which those who followed became partly conscious of certain general theories and principles. We must not, however, assume that these formed a coherent and logically developed system, even in Gregory's mind, nor must we assume that even those who were his convinced and consistent supporters actually followed Gregory in all the development s of his principles. We must not make the mistake of reading back the extremest papalist theories of the thirteenth and fourteenth centuries, or the systematic thinking of the thirteenth h century, into the eleventh. We must, therefore, now consider the more or less contemporary criticism and defence of Gregory VU.'s actions and claims, and endeavour to learn what were the conceptions about the relations of the Spiritual and

Temporal powers which developed in the course of the conflict.

We have very little literature which belongs to the first stages of this, but fortunately there has been preserved a correspondence between Bernard, the master of the school at Constance, and a certain Adalbert and Bernald, the author of the ' Chronicle.' The correspondence is thought to belong to the year 1076, and the writers were even then supporters of Gregory ; but their tone is somewhat different from that of their later writings, to which we shall presently refer. Adalbert and Bernald had written to consult Bernard with regard to the propriety of the forms under which Gregory VII. had excommunicated certain persons whom they term " *publicos et contumaces apostolicaj sedis prescriptores,*" meaning by these, presumably, the persons who had taken part in the Council of Worms, 1076, and also to ask his opinion with regard to the sacraments performed by simoniacal and excommunicated persons. We cannot deal with the details of Bernard's reply, but it contains certain points of importance for our purpose.

Bernard urges first that the Apostolic See is supreme, and that this supremacy is not affected by the worthiness or unworthiness of him who occupies it; but while the Roman See is supreme the Popes had often permitted their subjects to admonish them, for they desired to live under the rule of law and according to the canons. He does not say that the procedure of

Gregory had been irregular, but his treatment of the subject suggests that he was a little doubtful.¹ He also

discusses the objection which had been made to Gregory's tenure of the Papacy, that he had bound himself by an oath not to accept it without the Emperor's consent. Bernard does not contradict the story, but argues that even if it were true, the Roman Church could not be deprived of its right of free election.

Bernald and Adalbert, in their reply to Bernard, accept his view that the Popes might be admonished by their subjects, as Peter was by Paul, and then give that important account of the proceedings at Worms and Rome to which we already referred. They condemn the proceedings at Worms in the strongest terms, but it is noticeable that they are not quite clear about the question whether the Pope was not liable to the judgment of a properly called Church Council. They cite, indeed, various authorities which go to prove that no one could judge the Roman See, and especially the proceedings of the Synod of Rome, which refused to discuss the charges which were made against Pope Symachus, and left them to the judgment of God ; but they seem to except the case of heresy ; and they assert that Gregory VII. had repeatedly expressed his willingness that a Council to be held at Rome or elsewhere should consider the circumstances of his appointment and his conduct, and that he would descend from the Apostolic throne if he were found worthy of deposition.¹ It does not appear upon what authority they made this statement : there is no other evidence to confirm it. To us its importance lies in the fact that men who were supporters of Gregory VII. should have said it. The writers then give an account of the proceedings of the Council at Rome in 1076, and especially of the excommunication and deposition of Henry IV., and maintain that there could be no doubt of the canonical promulgation of this excommunication, as he had been repeatedly warned and waited for.¹ We shall deal with the later opinions of these writers further on.

The other writings with which we shall now deal all belong to the period after the second excommunication and deposition of Henry in 1080, and after the Synod of Brixen and the election of the Antipope, Guibert, by Henry and his supporters in the same year. It may, perhaps, be convenient to begin by considering two works written shortly after this, which represent the opinions of moderate representatives of the two parties, Gebhardt, the Archbishop of Salzburg, and Wenrich of Trier.

Gebhardt was one of the most moderate but also the staunchest supporters of Gregory VII. during the conflict with Henry, and in a letter or treatise addressed to Hermann, the Bishop of Metz, he sets out some of the considerations which seemed to him the most important. He traces the origin of the conflict chiefly to the neglect of the rule of the Church, which commanded the faithful to avoid the society of those who were excommunicated, and especially those excommunicated by Rome,² and to the error of those who refused to recognise that a sentence of excommunication, whether men considered it just or unjust, was binding until it was reversed by competent authority,¹ and he urges this with special reference to the excommunications which had been made by the Roman Council of 1080.² He then deals with the question of the deposition of Gregory VII., and the appointment of the Antipope in the Synod of Brixen in June 1080, and contends that this had been done in contradiction to the evangelical and apostolic doctrine that the Pope could not be judged by any man.³ He then discusses the arguments of those who maintained that they could not violate their oath of allegiance to Henry, and urges that it is clear that oaths which have been wrongly taken, or involve some great wrongdoing, must not be kept.⁴ Gebhardt then turns upon the clerical supporters of Henry, and asks whether they think that it is in accordance with the character of the priestly office that they should by their counsel and help assist a Christian prince to compel men to violate the Christian law, to persecute the faithful, to seize the sanctuaries of God, and to pollute the sacred places with the slaughter of the servants of St Peter. They say that they are faithful to St Peter, but that it was right that they should attack the occupant of the See of St Peter because he had published an unprecedented

and unjust sentence of condemnation upon the King and many bishops. He urges them to consider that even if the Pope had acted with unnecessary harshness, it would have been becoming to orthodox bishops to persuade the prince to seek for some remedy by ecclesiastical procedure, and not by means which destroyed the laws of the Church, by means of slaughter and devastation.¹

Finally, he urges that it was idle for them to endeavour to justify themselves by complaining of the harshness and unprecedented character of the action of the Pope, for it was they themselves who were the cause of all the trouble. It was their action at Worms (1076), when they had pronounced the sentence of deposition against Gregory, which was the origin of all this calamity : the Pope had not then issued any decree of excommunication against them, it was they who had renounced their obedience to him.¹ This was in Gebhardt's judgment the real beginning of all the trouble, and for this there was no justification.²

These contentions are to us specially interesting, as they indicate that in Gebhardt's opinion—and it would seem to be that of a moderate man who was not prepared in every respect to approve of the action of Gregory VII.—the conflict had arisen not so much from a revolutionary innovation of Gregory, as from the more revolutionary action on the part of Henry and his supporters among the bishops in attempting to judge and depose the Pope. In face of such an attempt and its consequences, Gebhardt could not hold it to be unreasonable that the oaths which bound men to obey Henry should be treated as null and void, and should be formally set aside.

If we find in Gebhardt of Salzburg's treatise a good representation of the moderate opinion which supported Gregory VII., we find in a letter written by Wenrich of Trier, in the name of Theodoric, Bishop of Verdun, probably between October 1080 and August 1081, a very forcible statement of the position of the moderate supporters of Henry IV. For it must be observed that the letter is written as from the standpoint of one who still recognised Gregory as Pope, and who had even suffered much in maintaining his cause.³ Theodoric of Verdun was indeed one of those who frequently wavered, being found sometimes on the side of Gregory, sometimes on that of Henry.

Wenrich begins his letter by recognising the high character and abilities of Gregory. Though he also gives at some length the charges of violence and ambition which were made against him, he does not himself assert the truth of these charges, as being matters outside his own knowledge.¹ He does, however, gravely censure him for the subversive character of the steps which he had taken to suppress the "incontinence," i.e., the marriage, of the clergy; he charges him with stirring up the laity against the clergy, and thus destroying the whole order of the Church.² This is, however, only introductory.

He turns then to the action of Gregory in deposing Henry and sanctioning the election of Rudolph, and contends that such action was wholly illegitimate : there was nothing new, he says, in the rebellion of secular persons against the king, but it was a thing new and unheard-of that the Pontiff should take upon himself to bid the king descend from the throne of his fathers, and to excommunicate him unless he promptly obeyed.³ He reminds Gregory that Ebbo, the Archbishop of Rheims, had been deposed for his rebellion against Louis the Pious, and he contrasts his conduct with the conduct and principles of Gregory the Great, who had enjoined upon men reverence and obedience to their rulers, and had expressed himself as bound to obey the commands of the Emperor, even when he disapproved of them.⁴ He then discusses the question of the validity of excommunication, and, supporting his arguments with many citations from the Fathers, urges that excommunications made for unjust reasons have no real

effect.¹ He does not, indeed, directly controvert the principle which is represented in Gebhardt of Salzburg's treatise, that a sentence of excommunication must be accepted until it has been rescinded by competent authority, but he clearly wishes to qualify the effect of the papal sentence. He then proceeds to argue with great vehemence against Gregory's claim to absolve Henry's subjects from their oath of allegiance, and flatly denies that the Pope had any such

power, even though it were true that Henry was really an impious and wicked prince ; and he retorts by making a violent attack upon the character of Rudolph of Suabia and of other rulers who were favoured by the Pope and had obtained their territories by violence and crime.² He also discusses the question of lay investiture of bishops, but we have considered this in an earlier chapter,¹ and incidentally refers to the authority of the Emperor in confirming elections to the Papacy, citing the case of Gregory the Great.²

It is noticeable that Wenrich does not justify the action of Henry and his supporters in deposing Gregory from the papal throne, though he suggests excuses for this, nor does he maintain directly that the Pope had no authority to excommunicate Henry ; but he does deny that the Pope's excommunication was necessarily valid, and he emphatically repudiates the authority of Gregory to depose Henry and to absolve his subjects from their oath of allegiance.

These treatises of Gebhardt and Wenrich will serve well to illustrate some of the main principles which were at issue in the conflict, and, as is frequently enough the case in controversy, each is more successful in stating his own case than in meeting that of the other, in criticising the attack which had been made on one side or the other than in defending the action of the party which each represented. These works belong to the period immediately following the final deposition by Henry of Gregory and the election of an Antipope by Henry, but the majority of the controversial tracts and pamphlets which have been preserved were written a few years later.

The first of these with which we shall deal was written probably in 1084, when Henry IV. had occupied Rome. It is the work of a certain Peter Crassus, who may have been a teacher of Roman law at Ravenna: the author at least makes a great display of legal knowledge, and represents his position as being that of one who desired to show that the case of Henry rested upon the laws ; and, if Gregory VII. should refuse to recognise the authority of the Roman laws, he proposes to send to Henry a work in which, as he said, Gregory the Great had collected both systems of law, meaning by this the civil and canon law, for use in the Church.¹

He contends that it was the Emperor who had given the Church peace, and that it was Gregory who had broken the peace,² and he advises Henry to call together a council which Gregory should be summoned to attend.³ He charges Gregory with sorcery, and appeals to those who attend as judges to deprive him of his ecclesiastical privileges, and to hand him over to the secular authority for punishment.¹ He speaks of Gregory's action in excommunicating Henry and plotting against his kingdom as being contrary to the law, and he urges upon the Saxons that Henry held his kingdom by right of hereditary succession, and that it was no more legitimate to question the right of a king to the kingdom which he had inherited from his ancestors, than that of a private person to the hereditary ownership of his property. He contends, therefore, that neither they nor Gregory had any claim to sit in judgment upon Henry with respect to his right to the kingdom which he had inherited from his father and received by the divine appointment.² This contention of an indefeasible hereditary right to the kingdom is noteworthy; it is interesting as anticipating a later development of political theory, but obviously enough has as little relation to the Roman law as it has to the traditional principles of the earlier Middle Ages. He further urges the wickedness of persuading men to violate their oaths of allegiance, and the respect and consideration due to kings and their divine authority, and concludes by calling upon the Saxons to submit to the judgment of Henry and to ask for his mercy.¹

This treatise, in spite of its pretensions to represent a special knowledge of the Roman law, contains little of importance in the way of argument. We have in a former volume dealt with the political theories of the lawyers of Bologna in the twelfth century,² and it would be difficult to establish any relation between their work and the rather crude dogmatism of Peter Crassus.

We find a more serious statement of the position of the thoroughgoing supporters of Henry in an anonymous treatise which is thought to belong to about the same time. We have in this a reasoned argument, based, at least in some measure, upon important historical

considerations.

The question to which the writer primarily addresses himself is the right of the Emperor to a place in the determination of elections to the Papacy. He begins with an emphatic statement of the primacy of Rome over all churches, and one MS. includes a declaration that Rome judges all, but is judged by none, except in the case of a papal election which is unjust and contrary to the Imperial dignity, or in the case of a disputed election.¹ He then brings forward a number of cases in which it was the Emperor who had, as he maintains, decided which of the rival claimants should be recognised as the legitimate Pope. These examples extend from the election of Damasus I. in 366 A.D. to the action of Otto I. in 963 and / 964. The author concludes this enumeration by saying that after the intervention of Otto, the Senate and people of Rome swore that they would not for the future elect a Pope without the consent of himself and his son. He then relates that the Emperor Henry III., after deposing certain Popes, made a similar regulation, and that he obliged Hildebrand, at that time sub-deacon, to swear "nunquam se de papatu intro- missurum " without his permission. He gives an account of that part of the decree of Pope Nicholas II. and his Council with regard to elections to the Papacy, which refers to the Emperor, and says that by this decree, which was made with the consent of the whole Roman clergy and people, it was established that whoever should stir up factions with regard to a papal election, or should be made Pope without the consent of the Emperor Henry and his son, should be held not as Pope, but as Satan and an apostate. He specially adds that Hildebrand swore to this and subscribed the decree.¹

Having thus dealt with the past, and justified by these historical precedents the claims of the Emperor to a certain authority in the appointment of the Pope, the author briefly describes the situation of his own time. He alleges that Hildebrand had obtained the Papacy by the assistance of one of the Roman nobles, Chinchius, and the party which they had formed. Henry had sent envoys protesting against his assumption of the Papacy, and bidding him descend from the papal throne, but without effect; and only at last, after wars, seditions, murder, rapine, and conflagrations, had Henry succeeded in occupying Rome, and had then after the ancient custom established Clement as Pope, and received from him the Imperial crown. He concludes by pointing out that the Roman Emperors had refused to accept certain men as unworthy to be Popes, had deposed some, had themselves appointed some, and had ordered others to be appointed.²

We may distinguish in the treatise two lines of argument of unequal value. The statements which he makes about the election of Hildebrand do not seem to represent anything more than the gossip of the Imperial party. The treatment of the place of the Emperor in papal elections, on the other hand, is well stated, and shows a just apprehension of the historical foundation of the Imperial claim.

A treatise written by Wido, afterwards Bishop of Osnaburg, of which we have unfortunately only extracts, compiled apparently about the year 1118, is concerned primarily with the vindication of the election of the Antipope, Guibert of Ravenna.¹ He defends this on the ground, first, of

the legitimate place of the prince in papal elections ; and, second, of the justice of the deposition of Gregory VII. He contends that by the long custom of the Church the Emperor should be consulted before the institution of a Pope. Wido recognises, indeed, that in the first ages there was no such custom, but after the conversion of Constantine and the enrichment of the Church, the Papacy became an object of men's ambition, and the succession was factiously and violently disputed, and it was found necessary that the Roman prince should intervene to secure that the elections should be conducted in a regular and canonical manner. It then became the custom that, when a Pope was elected, he should not be consecrated until the election was reported to the prince and he was satisfied that it had been properly conducted, and until he had issued his mandate for the consecration.¹ He then sets out a number of examples to establish this contention, and to show that the place of the prince in the election had been consistently recognised, and had never been condemned.²

Wido is, however, careful to add that this does not mean v that the prince possessed any

arbitrary power in this matter : it is only with the consent of the clergy and people that he has power to appoint the Pope ; he may not appoint any one to whom there is a canonical objection, and he may not claim for himself anything which canonically belongs to the Pontiffs. This is how Wido interprets the canonical rule that the laymen have no power of disposing of ecclesiastical things. He

adds, however, that the king is not really a layman, for in virtue of his anointing he has a share in the priestly ministry.¹

The second extract from Wido's treatise deals with the question of the excommunication of the Roman prince. He asserts that no Pope before Hildebrand had excommunicated the prince, even though he had been guilty of serious offences against the Church. The reason of this was, not that they feared to lose human favour, but because they bore in mind the apostolic injunction, to do all things to edification. He points out that the result of the conflict of Hildebrand and Henry IV. was more intolerable than a civil war, and he therefore describes his action in excommunicating Henry as unrighteous and unjust.² He endeavours to prove that the action of St Ambrose against the Emperor Theodosius was not really a case of excommunication.³

The third extract deals with the question of the absolution of Henry's subjects from their oath of allegiance, and Wido contends that even if the excommunication of Henry had been just, and pronounced by a proper person, this would not give any sanction to the claim to absolve his subjects from their oaths. Those who had taken such oaths could not break them without perjuring themselves, and he who permitted and commanded men to violate their oaths rendered himself guilty of perjury. It was therefore clear that in absolving Henry's subjects from their oaths, Hildebrand had violated the law of God and the order of the Church, had been the cause of the destruction of peace, had stirred up sedition and schisms, and had brought innumerable calamities upon the Church and the kingdom.¹ He therefore concludes that it was just that Hildebrand should have been deposed, inasmuch as he had abused the authority of the Papacy, and had set the " sacerdotium " and the " regnum " against each other, for while the two heads of the Church were at war with each other no good could come to body or soul.²

These treatises, and especially the second and third, represent very clearly the main principles of those who supported Henry IV. after the final breach of 1080. The strength of these arguments lay undoubtedly in the appeal to the historical relations of the Empire and the Papacy, in the many precedents by which they seek to prove the Imperial right to be consulted with regard to elections to the Papacy, and to intervene in cases of disputed elections. Not less important, however, is the restatement by Wido of Osnaburg of the contention of Wenrich of Trier, that even if the excommunication of the prince was within the power of the Pope, this did not carry with it any right to depose him and to absolve his subjects from their allegiance.

We must now turn to the arguments of the supporters of Gregory VII., and consider some works which were written about the same time as those which we have been considering.

The first with which we deal was written probably by the same Bernard, the master of the schools at Constance, with some of whose correspondence at the time of the beginning of the conflict in 1076 we have already dealt.¹ The treatise with which we are now concerned was written in 1085, and if it is indeed by the same author, shows that in the meanwhile his judgment had cleared and hardened. It consists mainly of a catena of passages arranged under various heads from ecclesiastical writers, which seemed to the author to vindicate the position of the papal party.

The author, like Gebhardt of Salzburg, evidently felt that the origin of the whole conflict, and the first foundation of the position of Gregory VII., should be looked for in the principles of excommunication and its consequences, and he therefore begins by setting out the strict ecclesiastical doctrine that the Christian man must have no dealings with excommunicated persons, on pain of rendering himself liable to excommunication.¹ He is aware of the difficulty which arises from the fact that the excommunication may be unjust, but maintains that the sentence must be respected until it has been rescinded.² Having thus cleared the

ground, he comes to the main subject of the treatise, the excommunication of Henry and the deposition of Gregory VII. He first cites some passages from St Augustine and from a supposed work of St Chrysostom, which might seem to show that it was not lawful to resist the king,³ but then puts together a catena of passages showing that no one was exempt from the spiritual authority of the Pope, and enumerates a great number of cases in which, as he maintained, kings and emperors had been excommunicated and deposed.⁴ He then deals with the deposition of Gregory VII., and maintains that the Pope was not subject to any man's judgment, but that even if he were thus subject, Gregory had been judged and condemned without any of the necessary canonical forms.⁶ A little farther on he discusses the question of the sanctity of the oath of allegiance, and argues that those who swear fidelity to a lord do so only as far as the Catholic law permits. To serve a lord in his perversity is not to be faithful, but unfaithful to the oath. To obey an excommunicated person, or one who communicates with excommunicated persons, is a greater crime than perjury. No oath is to be kept which is contrary to the safety of a man's country and the laws of the Church ; no man must take the oath of fidelity except in the Lord, nor must he keep it against the Lord,⁶ and he illustrates this with

a story about the Emperor Otto and Adelgisus of Benevento, and justifies it with a number of quotations from St Ambrose.

If there is nothing new in the treatise, it at least restates with clearness and with a considerable array of learning the case of the papal party, and it concludes with a vigorous invective against the Antipope, Guibert.

The most considerable political work of the time is the treatise of Manegold of Lautenbach, 'Ad Gebehardum.' We have in the last volume discussed his theory of the nature of political authority in detail,¹ we are therefore here only concerned with his treatment of the relations of the Temporal

and Spiritual powers, and of the actual conflict between Gregory VII. and Henry IV. Manegold's treatise is what we may call a reasoned defence and justification of Gregory's policy, in reply to the criticism of Wenrich of Trier, and in the main he follows that order in the development of his subject which Wenrich had adopted.

He begins by defending the character of Gregory against the charges which Wenrich had made or reported,¹ and proceeds to a vindication of his policy of Church reform, laying special stress upon the prevalence of simony and of what he calls the " fornication " of the clergy ; and he justifies his action in calling upon the laity to refuse the services of the clergy guilty in this respect.² He then gives an account of the outbreak of the great conflict, of the proceedings of the Council of Worms, at which Gregory was deposed, and of the Council of Rome, at which Henry was excommunicated and deposed.³ This leads to the most distinctive and important part of his work, the right of subjects to depose a tyrannical king, and to the discussion of the real meaning of the authority of the Pope in absolving subjects from their oath of allegiance.⁴ He repudiates Wenrich's suggestion that papal elections needed the Imperial consent,⁵ and he defends the prohibition of lay investiture.⁶

We have already dealt with Manegold's discussion of the Investiture question,⁷ and we are not here specially concerned with his defence of Gregory's character, but we must consider a little more clearly his account of the beginnings of the conflict between Gregory and Henry, and his justification of the excommunication and deposition of Henry. Manegold's description of the proceedings at Worms and at Rome is apparently taken in the main from the Chronicle of Bernald and from Gregory's letters. He represents Gregory as having for several years remonstrated with Henry about his various offences, and as having finally warned him that unless he

repented he should proceed to excommunicate him. Henry, instead of acknowledging his evil deeds, called together the bishops and princes at Worms, and then by their advice and instigation declared the deposition of Gregory, and announced this by his envoys to the Roman Council. It was for this reason that at last Gregory and the Council at Rome decreed the excommunication of Henry and his deposition from the throne.¹ Having thus set out the

circumstances and cause of the action, Manegold brings forward a number of historical precedents. He alleges that Gregory the Great had approved the deposition and execution of the Emperor Maurice, that the Emperor Constantius had been reckoned as a heretic by Pope Felix, that Louis the Pious had been compelled by the bishops to do penance, that it was by the authority of Pope Stephen that Chilperic had been deposed and Pippin elected King of the Franks, and that Pope Nicholas had excommunicated the Emperor Lothair on account of his concubine Waldrada. (We are not here concerned with the historical accuracy of his statements.)² He then cites a number of cases in which kings had been deposed by their own subjects, and this leads up to that discussion of the nature of kingship with which we have dealt at length in the last volume, in which he maintains that the king holds his authority in virtue of that agreement or contract by which he has promised to uphold law and justice, and the people have promised obedience, and argues that the crimes 'which Henry had committed amply justified his deposition.'³

We are not concerned with this question, which we have already considered in the last volume, but with Manegold's treatment of the action of the Pope, and we should therefore observe that he at once returns to the main argument, and this is, that Henry IV. and his supporters had conspired against the authority of the Holy See and the unity of the Church, and that it was therefore just that they should be coerced both by spiritual censures and by secular force.⁴ It is clear that he looks upon the action of Gregory VII. as being justified primarily by the action of Henry and his supporters at Worms ; while he is clear that such action—namely, the excommunication and deposition of Henry—was within the authority of the Pope. In his treatment of the question of Gregory's action in absolving the subjects of Henry from their oath of allegiance, he vindicates this, as we have pointed out in the last volume, as being nothing more than the public and authoritative declaration that the oath was already void.¹

The work of Bonizo, Bishop of Sutri, entitled ' *Ad Amicum*,' contains in its seventh and eighth books an important but not always entirely trustworthy account of the events of the pontificate of Gregory VII. He was an ardent partisan of Gregory, but, while his statements must often be received with caution, he had taken a considerable part in the events of the time, and has preserved much important information—especially with regard to the " *Pat aria* " in Lombardy and the affairs of the Church of Milan. His account of the deposition of Gregory VII. by the Council of Worms in 1076, and of the excommunication and deposition of Henry IV. by the Council of Rome in the same year, contains nothing specially new, and he justifies the action of Gregory very much as we have already seen. It was just, he says, to excommunicate the King for endeavouring to expel Gregory from the Holy See, and he cites a number of precedents to • show that the Popes had in former times both excommunicated and deposed kings.² He very emphatically attributes the election of Rudolph at Forcheim, in 1077, to the German princes, and speaks of it as the cause of much evil to the world.³

A short treatise, attributed to Anselm, the Bishop of Lucca, which is thought to have been written shortly after the death of Gregory VII. in 1085, contains a violent invective against the Antipope, Guibert, and attributes the conflict in large measure to the simony of Henry, and his attempt to destroy the liberties of the Church.¹

Several treatises have survived, •written by the same Bernald, whose correspondence with Bernard in the year 1076 we have already considered.² In one of them, which was written probably in 1086, after the death of Gregory VII., he contends strongly for three points : first, that the faithful must avoid the society of excommunicated persons, and therefore especially that of Guibert the Antipope and his followers ; secondly, that kings are subject to the authority of the Church, and are liable, like other men, to excommunication ; thirdly, that Gregory had not driven men to perjury, but had released men from their oath of obedience by the same authority by which he excommunicated and deposed their rulers.³ He deals with these matters in a highly significant way in another treatise of uncertain date, and argues, first, that if the successors of Peter had, as he has shown, authority to bind and loose, and thus to depose even the Patriarchs of the Church, much more must they have power to depose secular

princes, whose dignity was a matter of human creation, and he confirms this by citing some often-quoted passages from St Gregory the Great and some of the usually alleged examples ; secondly, that if they had authority to depose the rulers, clearly they must have power to absolve their subjects from their obedience and oath of fidelity ; thirdly, that such oaths were in reality only taken to the ruler as long as he held his office, and were in no way binding if he were legitimately deposed, and that in such cases the Church only formally declared men to be absolved from their oaths for the sake of the weaker brethren, who might not in such cases understand that a thing was done unless it were specially mentioned.¹

The most interesting work of the time is, however, a treatise written by Wido, the Bishop of Ferrara, in the year 1086, after the death of Gregory VII, but before the election of his successor. It was written at the request of the Antipope, Guibert (Clement), and its purpose may have been to suggest that, now that Gregory VII. was dead, it might be possible even for his supporters to accept Clement. The strange thing about the work is the force and clearness with which, in the first part of the work, he sets out the defence of Gregory VII. ; indeed it is one of the most effective statements of his case—more effective both in substance and force than his presentation, in the second part of the treatise, of the charges which Henry IV.'s followers brought against Gregory.

In the first part of the treatise Wido begins by setting out the high character and energy of Hildebrand, and the orderly and canonical circumstances of his election to the Papacy.¹ He then gives a grave account of Henry IV.'s personal vices and simoniacal practices, and of Gregory's attempts to bring him to a better mind and conduct. Henry, however, refused to listen ; and finally, being threatened with severe measures by Gregory, he called together the bishops of Germany and Lombardy and commanded them to condemn him. It was only then that Gregory and the bishops at Rome, finding Henry wholly impenitent, excommunicated and deposed him.² Wido then cites a number of passages from the Fathers to illustrate the authority which the Church claimed even over kings and emperors, and a number of cases in which kings and emperors had been excommunicated and deposed.¹ He gives an account of the attacks made upon Gregory because he had raised up Rudolph of Suabia against his King, in spite of his oath of allegiance ; but he argues, first, that Gregory had always maintained that it was not he who had appointed Rudolph ; and second, that Henry had been legitimately deposed, and that Rudolph was therefore released from his fidelity, and that if Gregory consented to his election he was not doing wrong.² He meets the charge which was made against Gregory—that he had stirred up the Germans to war against Henry—by the argument that he was only carrying out the judgment of the Fathers that it was right to attack and coerce the wicked: it might be proper for the saints not to defend themselves, but the maintenance of justice was another matter.³ When Gregory released the Germans from their oath of allegiance to Henry, he was only declaring that the oath was already null and void. It was alleged that Gregory had stirred up the laity to attack and ill-treat the simoniacal and married clergy ; but Wido replies that he had always, while condemning their conduct, lamented the violence which had been done to them, and brings forward various passages from the Fathers to justify Gregory's action in forbidding the faithful to receive the sacraments from them.⁴ He cites various authorities which seemed to justify Gregory's action in prohibiting lay "investiture,"⁵ and he briefly describes the arguments of those who maintained that the election of Guibert (Clement III.) was invalid.⁶ He concludes the first part of the treatise with a short account of the occupation of Rome by Henry, the appearance of the Normans to relieve it, their sack of the city, and the final withdrawal and death of Gregory.⁷

As we have already said, the defence of Hildebrand is well considered and effectively stated.

In the second part of the treatise Wido sets out the main charges against Gregory, and the arguments which would justify his deposition and the election of Guibert as Pope. In the first place, he contends that Gregory was elected in defiance of the constitution of Nicholas H.,

without the royal consent ; and he reports, but as a doubtful matter, the stories that he had procured his election by bribery.¹ In the second place, he argues that even if Gregory had been rightfully elected, he had forfeited his dignity by the misuse of his powers. He had waged war against all the prescriptions of the Fathers ; he had been the cause of much slaughter and perjury in setting up Rudolph and absolving the Germans from their oath to Henry ; he had taught, in contradiction to the doctrine of the Fathers, that the sacraments of schismatic and excommunicated persons were invalid ; he had excommunicated Henry and various other men unjustly, and without regard to the necessary forms of procedure.² In the third place, he urges that, even if the charges against Gregory and the conclusion that he had forfeited his authority were passed over ; even if it were admitted that Guibert's election had been in the first place irregular, there was no reason why he should not, now that Gregory was dead, be recognised as Pope, and he brings forward parallels which would justify such a course of action.³ We have already dealt with Wido's treatment of the " investiture " question,¹ and need therefore here only observe that Wido represents the secular right of investiture as having relation only to the temporalities of a bishopric. He concludes his treatise by urging that there were two arguments which proved that Gregory deserved to be condemned: the first, that he caused Rudolph to be set up as king, and thus caused the slaughter of many men and involved many of the Germans in perjury ; the second, that he was guilty of schism, in that he forbade the people to receive the sacraments of unworthy and excommunicated priests, and that he denied that these were sacraments.²

A few years later there was written a work entitled, ' De Unitate Ecclesiarum Conservanda,' with the examination of which we may conclude this chapter. It was written between the years 1090 and 1093, as is evident from various references in the text, but the authorship is uncertain. There is much of importance in it with which we cannot here deal, and especially the account of the political and ecclesiastical conditions in Germany in the years from 1086 to 1092. We must confine ourselves in the main to the examination of the author's discussion of the claim of Gregory VII.—that he had authority to excommunicate and depose kings and emperors—and of the whole question of the relation of the Temporal and Spiritual powers which arose out of this.

It is of great interest to observe that, for the first time, we have a critical historical discussion of the alleged precedents for the excommunication and deposition of kings. He considers first the alleged deposition of Chilperic, the last of the Merovingian kings, and the appointment of Pippin as King of the Franks, by Pope Zacharias and Pope Stephen. He does not indeed deny that these Popes took part in this ; but he maintains that they only gave their consent and authority to that which had been done by the common consent and authority of the Frank princes, and he therefore protests that Gregory had completely misrepresented the whole matter when he said that it was the Popes who, by their sole authority, had deposed Chilperic and absolved the Franks from the oath of fidelity.¹ The author then discusses the cases of excommunication Gregory had cited : he does not indeed deny that St Ambrose excluded Theodosius from the communion, but he urges that when St Ambrose thus excluded Theodosius he did not attempt to interfere with his political authority or position, and that he and the Popes did not attempt to do this in the case of heretics like the Emperor Valentinian and his mother Justina and other heretical rulers.¹ On the other hand, he doubts the truth of the alleged excommunication of the Emperor Arcadius by Pope Innocent I., and argues that there is no mention of this in the historical documents, that there seemed to be no sufficient reason why it should have been done, and that the relations between Arcadius and the Church were of a friendly character, as is testified by his legislation.¹

This critical examination of the alleged historical precedents is interesting and effective, for no doubt it fixed upon a weak point in the Hildebrandine position ; but this is not all that is important in the treatise. Indeed, its most significant aspect is its careful statement and discussion of the principle of the distinct functions and the equally divine authority of the two powers. He quotes some of the most important passages from the writings of Pope Gelasius I.

to establish the principle that it was God Himself who ordained the two powers—that is, the Temporal and the Spiritual—to govern the world, and that Christ separated the two from each other. It is the function of the Temporal power to punish the evil and reward the good. It is clear that God had not ordained that all crimes should be punished by the heads of the Church, many of them are rather to be dealt with by the secular authority; the priest has only one sword, that of the Spirit. He also urges that it had often happened in former times that kings or emperors had been the friends and defenders of heretics ; but even under such circumstances the bishops and Popes had addressed them in deferential and conciliatory terms, that they might secure peace to the Church, and he illustrates this with various passages from the letters of the Popes Gelasius and Anastasius. It never entered into the minds of the Pontiffs that they should endeavour to depose the Emperors, but they left them to the judgment of God.² The author returns

to this in a later part of his treatise, and, reaffirming the principles of the distinctiveness and independent divine authority of the two powers, contends that Hildebrand and his bishops had really attempted to overthrow the divine order, and to usurp an authority which belonged not to them but to the king.¹

This treatise is thus of great importance in that it raises more clearly than had hitherto been done the question of the whole significance of Gregory VII.'s claims. He does not indeed refer directly to the very emphatic and highly developed form of these which had been made by Gregory in his later statements,¹ but he urges with much force what he felt to be the significance of the whole of Gregory's action, and maintains that this confusion between the two powers could only end in the destruction of both. We have in the last volume dealt with this treatise as seeming in some measure to illustrate the survival of the tradition of Gregory the Great that the royal authority was in such a sense divine and derived from God, that all resistance to it was unlawful and impious ;² but this position must not be confused with his contention that the Hildebrandine claim destroyed the divinely appointed distinction between the Spiritual and the Temporal powers.

We may finally observe the terms in which the author discusses the question of the election of the Antipope Guibert, and his claim to be recognised as Pope, at least after the death of Gregory VH. He represents Henry as coming to Rome, desiring either to come to terms with Gregory, or, if that could not be done, to procure the appointment of another Pope. It was only when Gregory refused to receive him, unless he resigned the kingdom into his hands, that he was compelled to use force. When he had occupied the city the Roman Church elected Guibert as Pope, and he consecrated Henry as Emperor.³ The author passes over the fact that Guibert had been elected as Pope by Henry and the bishops of his party at Brixen in June 1080, evidently wishing rather to rest his claim to the Papacy on his reception or election by the Boman Church in 1084. In a later chapter, however, he suggests that even if there had been some irregularity about his original election, this was no sufficient reason why he should not be recognised as Pope after the death of Gregory, and he cites cases in which the appointment of Popes had been irregular, but they were afterwards recognised and accepted by the Church.¹ The treatment of the subject is very similar to that of Wido of Ferrara.²

If we now endeavour to sum up the main points in the literature we have just examined, we shall recognise the great need of caution in dealing with the principles at issue. We do not find in these writers a systematic theory of the respective powers of the spiritual and temporal authorities ; we must be very careful not to attribute to them theories which we may think to be logically connected with their opinions ; indeed, it may be said of all, or almost all of them, that they are not so much concerned with a general theory of the relation of the two authorities as with the actual situation of the moment.

There were two main questions immediately at issue between the two parties—the question of the right or authority of the King of the Germans and the bishops of the Church to appoint or depose a Pope, and the question of the authority of the Pope to excommunicate and depose the King. The supporters of Henry IV. contended that no Pope could be elected without the consent of the King or Emperor, and they were no doubt able to bring forward a great amount

of histori

cal evidence in support of the contention, and some of them maintained that Gregory VII. had never obtained this consent. Several of them maintained that in certain circumstances at least it was lawful to judge and depose the Pope, and contended that the conduct of Gregory VII. had been such as to justify the action of Henry and his deposition.

The supporters of Gregory do not for the most part discuss the question of the right of the Emperor to be consulted with regard to the election of a Pope. Manegold, however, repudiates it. We have seen that there was perhaps some hesitation in their minds about the question whether the Pope could be judged by anyone, but on the whole they repudiated the contention.

The Hildebrandine party look upon the conflict as having arisen ultimately from the urgent need for the reformation of the Church, and the refusal of Henry to accept this. This is urged with great force, not only by Manegold, but also by Wido of Ferrara, in his exposition of the case for Gregory. And, with regard to the great and revolutionary events of 1076, it must be observed that the supporters of Gregory urge that he only excommunicated and deposed Henry in consequence of his action in first deposing the Pope. It is very noteworthy that Gebhardt of Salzburg puts this point very emphatically, and urges that it was Henry, and the bishops who followed him, who were the authors of the whole trouble. This is also urged not only by Manegold and Bonizo, but also by Wido of Ferrara. It is apparently true to say that, as far as the authors of these treatises are concerned, the supporters of Gregory were not at first quite clear in their minds whether his action had been wholly wise. Gebhardt seems to admit that it might be thought unduly hard, and Bernard was not at first clear about his procedure, but they are throughout clear that his action was legitimate.

They are emphatic in asserting that no one, not even the king, was exempt from the spiritual jurisdiction of the Church and the Pope, and they brought forward a number of alleged precedents for this. They do not, strictly speaking, argue that the power of excommunication necessarily implied the

power of deposition, but rather seem to assume it on the ground of a certain number of alleged precedents, especially that of the alleged action of Pope Zacharias in deposing Chilperic, the last of the Merovingian kings. It is possible that we get nearer the real ground of these views in the contention of Bernard in the 'Liber Canonum contra Heinricum Quartum,' that an oath of fidelity to an excommunicated person cannot be thought of as binding. It is indeed evident that the generally received principle that the faithful must have no dealings with an excommunicated person made the position of an excommunicated king very difficult.

The supporters of Henry IV. met these contentions in various ways. In the first place, Wenrich maintains that a sentence of excommunication was not necessarily just, and an unjust sentence was, ipso facto, void. Others, however, carried the criticism further, and examined the alleged cases. Wido of Osnaburg does not say that the Popes had no authority to excommunicate the Prince, but denies that they had ever done this before, and this not from any fear of man, but because they saw that it would not tend to "edification," and would bring about the gravest evils. The author of the treatise 'De Unitate' does not deny that Theodosius had been excluded from the communion of the Church by St Ambrose, but he examines with considerable historical acumen the statement that the Emperor Arcadius had been excommunicated by Pope Innocent. What is, however, more important, is the criticism which was directed against the assumption that the power of excommunication necessarily implied the power of deposition, and against the alleged precedents for this. Wenrich urged that even if it were admitted that Henry IV. was all that Gregory alleged him to be, the Popes had no authority to absolve his subjects from their oath of allegiance, and that it was a thing unheard of that the Pope should bid a king descend from the throne of his fathers. Wido of Osnaburg maintains that, even if the excommunication of Henry had been just and valid, this gave Gregory no authority whatever to absolve his subjects from the oath of allegiance. The author of 'De Unitate' deals with the subject by means of a careful criticism of the alleged deposition of Chilperic by the Popes, and

urges with important examples, that the fact that a ruler was separated from the Church, had not as a matter of fact been considered a sufficient reason for assailing his political authority.

It is indeed in this treatise, as we have said, that we find the broadest apprehension of the nature of the questions which the great conflict had raised. As the author sees the matter, the question at stake was really the question of the independence of the two great powers. It is very significant that he restates with great emphasis and insight the Gelasian principle of the separation of the two powers by Christ Himself, and that he urges that there are vices and crimes which the Church cannot deal with, for the Church has only one sword—that is, the sword of the Spirit. It must, however, be observed that he does not meet the contention of the supporters of Gregory, that the conflict had arisen primarily from the attempt of Henry and his bishops to interfere with the freedom of the Roman See, and therefore of the Church as a whole.

Finally, it must be noticed that no one of the writers who maintain the cause of Gregory makes any claim that the Church, or the See of Rome, possesses a general authority in temporal matters. There is nothing which corresponds with some of the phrases used by Gregory VII. in his letter to Bishop Altmann of Passau, or even to that of his declaration at the Council of Rome in 1080.¹

CHAPTER in.

DISCUSSION OF THE ACTIONS AND CLAIMS OF GREGORY VII.—H.

WE do not propose to follow the sequence of historical events after the death of Gregory VII. in any detail. We have been compelled to do so for his pontificate because the development of the claim to political authority was so closely connected with the actual circumstances of the time. Gregory died at Salerno on May 25, 1085, and it was not till May 24 of the following year that Desiderius, the Abbot of Monte Casino, was elected in his place as Victor III. It has been suggested that he was inclined to come to some understanding with Henry IV.¹ We doubt whether the evidence for this is adequate, but it is noteworthy that, while in the Council held at Benevento in August 1087 he repeated the excommunication of the Antipope Guibert, and of all those who should receive “ investiture ” of any bishopric or abbey from lay hands, and any emperor, king, or duke who might presume to give “investiture,” there is no direct mention of Henry IV., and no reference to the question of his being deposed. Whatever may have been the mediating tendencies or intentions of Victor, he died in September 1087, before anything could come of them.

There was again a considerable interval of time before a successor was found: it was not till March 1088 that Otto, the Bishop of Ostia, was elected and consecrated as Urban II. He was a Frenchman, and a monk of Cluny, who had been brought to Rome and elevated to the Cardinalate by Gregory VII., and had been one of his staunchest supporters. In his first declaration of policy he seemed determined to maintain the policy of Gregory VII. in its entirety. On March 13, 1088, the day after his election, he wrote to the bishops and others of the papal party in Germany : he announced to them his election, and assured them that he desired in all things to follow in Gregory’s steps—what Gregory had condemned he condemned, what Gregory had held he held, what Gregory had approved he also approved, and in all things he thought as Gregory had thought. He exhorted them, therefore, to stand fast manfully as the Lord’s warriors in the day of His battle.¹ In April 1089 he wrote to Bishop Gebhardt of Constance, appointing him his legate in Germany, and informed him that after long deliberation with the brethren on the question of excommunication, it had been determined that in the first grade the Antipope and Henry IV. should be held excommunicate.² In September of the same year he renewed the prohibition of lay “ investiture.”³

The political situation in Germany had again changed. In 1088 Hermann of Thuringia had died ; no other claimant to the throne had been set up, and men’s minds turned to thoughts of peace. In 1089 the princes who adhered to the papal party approached Henry and offered their submission if he would give up his support of the Antipope Guibert. Bernald, in his ‘ Chronicle,’ represents Henry as

being personally inclined to do this, but as being dissuaded by the bishops of Guibert's party. The negotiations were renewed in 1091, but again they failed.¹ The opportunity had passed ; and in 1093, Conrad, who had been crowned at Aix-la-Chapelle in 1087, rose against his father, and the whole political condition changed in Germany and also in Lombardy. Several of the great Lombard cities—those named by Bernald are Milan, Cremona, Lodi and Piacenza—formed a league against Henry. Conrad was crowned by the Archbishop of Milan, and two years later, 1095, at Cremona he swore fidelity to Urban n., and was received by him as a son of the Roman Church. Urban promised him his help to obtain the kingdom and the Imperial crown, but always saving the rights of the Roman Church and the abolition of lay “ investiture.”²

Urban was now at the height of his power : from Lombardy he passed into France, and at the Council of Clermont, held in November 1095, he proclaimed the Crusade, renewed the prohibition of lay investiture,³ and excommunicated Philip, the King of France, for deserting his wife and living in adultery.⁴ When he died in July 1099, the papal cause was again powerful, both in Germany and in Italy.

Paschal H. was elected on the 13th of August of the same year, and in a letter of January 18, 1100, to Gebhardt of Constance, whom he had continued as papal legate in Germany, he assures him that the rumour that he was about to make concessions to Henry IV. and his followers was false.¹ In September 1100 Guibert of Ravenna, the Antipope, died, and there were movements towards a settlement between Henry IV. and the Papacy; but nothing came of those, and in January 1102 we find Paschal H. exhorting the Count of Flanders to attack Henry IV. and those who supported him, in every possible way, assuring him that he could render no better service to God than this.² In March 1102, at a Council in Rome, Paschal formally renewed the excommunication of Henry IV. He stoutly maintained the prohibition of lay “ investiture,” as we can see from his correspondence with Anselm and Henry I. of England,³ and in one letter he forbade the clergy to do homage to a layman.⁴ In 1104 he urged upon the Catholics of Bavaria and Swabia that Henry IV. was excommunicated.

It was in the last days of 1104 and the first of 1105 that a new revolt broke out against Henry IV. His elder son, Conrad, had died in 1100, but now a more dangerous rising was organised in Germany by his younger son, Henry. He asked for Paschal's absolution from his oath to his father, and Paschal sent him his blessing, and absolution from the oath, if he promised to be just in his dealings with the Church.⁶ In May Henry summoned a Council at Nordhausen, at which he made profession of profound deference to Rome ; but, as it would seem from Ekkehard's account, without any very specific promises.⁶ In November of the same year Paschal, in a letter addressed to the Archbishop of Mainz, restated, in view of the new conditions, the principles which he maintained. He is careful to urge that he desires the King to enjoy all those rights which properly belonged to him, and protests that he does not in any way desire to diminish these ; but on the other hand, the Church must be left in the enjoyment of her liberties. He acknowledges the place of the King as “ defensor ” of the Church, and as having the right to enjoy “ subsidia ” from the Church, but he has nothing to do with the ring and staff, that is with “ investiture ” ; and he expresses his anxiety to have peace on the condition that kings and priests mutually recognise each other's rights.¹

On December 31, 1105, Henry IV. was compelled by his son and the secular and ecclesiastical princes to resign the Kingdom and Empire ; in the following year he repudiated his renunciation and found considerable support, but on the 7th of August he died. We have dealt with the relations of the Papacy and Empire down to the settlement of Worms in 1122 in the first part of this volume, and we need not therefore go over this again.

In the last chapter we have endeavoured to set out the main characteristics of the controversy which arose immediately out of the great conflict between Gregory VII. and Henry IV. We have now to consider the further developments of this controversy in writings which are still closely related to that conflict, but also to the history of the years which followed Gregory's death, which we have just summarised. It is no doubt impossible to draw any sharp line between these writings and the earlier ones, but yet we think that there is some

difference. The literature we have hitherto discussed belongs to the years 1076 to 1093, that with which we now deal belongs to the years from 1097 to 1125. No doubt in this period the conflict was still acute : there was no reconciliation between the Empire and the Papacy so long as Henry IV. was alive ; and even after his death in 1106 the conflict, after a few years of comparative tranquillity, broke out again. And yet we think it is true to say that there is a certain difference in the character of these works, not that necessarily the claims of either party are lower—that is just what we shall have to consider—but that the controversy is occupied not merely with the actual situation but also with general principles, and while the controversialists sometimes set forward the most extreme positions, there is yet also frequently traceable an attempt to estimate and recognise the significance of the contentions of the other party.

The first of the writings with which we deal is the ‘ *Libellus contra Invasores et Symoniacos* ’ of Cardinal Deusdedit, which belongs to a date not earlier than 1097. He had been a consistent and strenuous supporter of Gregory VII. from the time when he is first mentioned in 1078. We have already referred to this work in relation to the “investiture ” controversy, we now only deal with it as illustrating Deusdedit’s position with regard to the nature of the temporal and spiritual authorities and their relation to each other.

In the Prologue, after setting out the main subjects of his treatise, he urges that he does not intend to belittle the royal authority, for it has its just place as much as the sacerdotal. The priest is to use the sword of the “ Word,” while the king wields the material sword: each has need of the other, and neither should interfere with the functions of the other.¹ The words are noticeable, and especially the assertion that the Church only uses the one sword, and the frank recognition of the distinctive place of the Temporal power. In the collection of canons which he had prepared in 1087, Deusdedit had cited a number of authorities which asserted the divine origin of the secular authority, and its function as the minister of God’s justice.²

In the third part of the treatise, however, the position which Deusdedit takes up might seem scarcely consistent with this. He has been considering a question of great importance—that is, the exemption of the clergy from the jurisdiction of the secular courts. We have in another volume dealt with the canonical discussion of this question.¹ We are here concerned with some observations which Deusdedit makes upon what he conceives to be a conflict between the ecclesiastical and the secular laws upon this subject. He maintains that in a case of conflict the secular laws must be rejected, and declares that in legislation the “ sacerdotium ” has a “ primatus,” for God gave laws to the kings through priests, and not to priests through kings ; and he illustrates this from the cases of Moses and Aaron, and of the Apostles. The sacerdotal authority, he says, surpasses the royal authority, for it was created by God Himself, while the royal authority was made by man, with God’s permission indeed, but not by His will, and he confirms this principle by citing the circumstances of the appointment of Saul.² We have dealt with the last part

of the passage in the third volume in relation to other phrases of the same kind, and we therefore do not discuss it again.¹

We must observe, however, that the whole passage raises a different matter—that is, the question whether in all cases of conflict between ecclesiastical and secular law the secular must always give way. This question we have discussed in another volume,² so far, that is, as it is dealt with in the canonical literature, and we do not at present return to it in its general significance. What, however, are we to conclude as to the meaning of the position of Deusdedit ? As we have just seen, Deusdedit clearly in this treatise maintains the distinctive place and position of each authority, the temporal as well as the spiritual, and in the ‘ *Collectio Canonum* ’ he had set out the authorities which declared the divine origin and authority of the Temporal power. Are we to think that in the last passage he intends to contradict these principles, and to maintain that the secular power had no divine character, and that the Spiritual power had some ultimate authority to override it, even within its own sphere, and with regard to its proper functions ? This seems to us to be most improbable, and we should suggest rather that we have here a very good illustration of the need of the great caution which is required in

interpreting isolated phrases of the mediaeval writers. Deusdedit is clearly concerned here as elsewhere to maintain the complete independence of the ecclesiastical authority and its legislation,³ and he asserts that it has relatively to the secular authority a certain "primatus," but this is not at all the same thing as to say that the ecclesiastical law could override the secular within its own proper sphere.

In January 1103, Pope Paschal H. wrote to the Count of Flanders urging him to attack the clergy of Liège, whom he treated as excommunicated, on account of their relations with Henry IV., and praised him for his vigorous action against Cambrai. At the instance of the clergy of Liège, Sigebert, a monk of Gembloux, wrote a letter, in the name of the Church of Liège, protesting against the letter of the Pope, and addressed it to all men of good will.¹

Sigebert's letter does not for the most part represent any new principles, but it sets out the position of those who refused to renounce their allegiance to Henry IV. with singular force, and it expresses not merely a judgment upon the theoretical points at issue, but a vivid sense of the actual results of the conflict. It is indeed this which gives its special significance to the work. Sigebert restates the doubt whether kings can be excommunicated ; the matter is still, he maintains, *sub iudice*,² but he is certain that whether the king is excommunicated or not, the oath of allegiance to him is binding, and he complains bitterly that the Pope should treat the people of Liège as excommunicated persons for no other reason than that they adhere to their bishop, who was faithful to his oath of allegiance to Henry.³ He maintains that, however evil the king is, he must be obeyed ; even if Henry were all that his enemies maintain, his subjects must not take arms against him, but must turn to God ; and he urges that the rulers for whom St Paul bade men pray were not even Christians. The Pope should follow his example, and should pray for the king, however great a sinner he might be, that men might lead a quiet and peaceable life, and he ought not to raise up war against him, and thus prevent men from enjoying peace and quiet.¹

Again Sigebert suggests grave doubts whether Henry had been excommunicated for just reasons : he finds traces of unreasonable passion in the papal attitude to him, and he reminds the Pope of the warning of Gregory the Great, that he deprives himself of the power of binding and loosing who does this arbitrarily and without sufficient cause. An unjust sentence of excommunication may be annulled by God Himself.¹ He bids Paschal remember by what evil means, from the time of Pope Sylvester to that of Hildebrand, men had often reached the papal throne ; and he reminds him that it had often been the Emperors who had had to bring the remedy, and to procure the condemnation and deposition of false Popes. The Pope ought to submit to reproof and correction with respect to grave and manifest evils, as Peter submitted to Paul ; he who will not submit to reproof and correction is a false bishop.¹ These considerations are forcibly stated, and it is important to observe that they are put forward by one who recognised Paschal II. as Pope, as well as the supreme place and authority of the Roman See.²

The most significant aspect, however, of his treatise is the eloquent protest against the policy of the Popes in appealing to force. He quotes the terms of the letter of Paschal H. to the Count of Flanders, in which he had praised him for that he had carried out his command by his attack upon Cambrai, and had urged him to go on to attack the schismatic clergy of Lidge, and all other supporters of Henry IV. Sigebert expresses his horror that the Pope should claim the responsibility for the devastation of Cambrai, for the slaughter of innocent and guilty alike ; he could not have believed that such things had been done by the authority of the Apostolic See, if Paschal himself had not said it. He contrasts this with the conduct of Martin of Tours, who refused to communicate with Bishop Itachius because he had been a party to the execution of Priscillian for heresy.³ This reference to

Martin of Tours, and his condemnation of the execution of heretics, is very interesting ; it may perhaps be accounted for in part by the fact that Wazo, the Bishop of Lidge, was said to have maintained the same view as Martin, and to have condemned the use of violence against heretics.¹ We must not indeed assume that Sigebert would have drawn out all the conclusions which we may think to be implied in his contention ; he was not probably intending to lay down

a general principle, but is rather describing the actual impression made upon himself and others by the appearance of the Pope as the direct author of the slaughter of men and women. He returns to the matter in a later chapter, and asks whence did the Apostolic See derive the authority to draw the sword against its own subjects. David was not held worthy to build the Temple of God because he was a man of blood, and how can the High Priest enter the holy of holies to offer the blood of Christ for himself and the people if his robe is stained with blood ? No Pope, from Gregory the Great until Hildebrand, had used any but the spiritual sword, or had taken the sword of war against the Emperor.¹

Many of Sigebert's arguments are not new, but we seem to feel in his letter a growing sense of the horror of the long conflict and its bloodshed and devastation.

It was about the same time as Sigebert addressed his letter to all men of good will that Hugh of Fleury dedicated a treatise upon the royal authority and the priestly dignity to Henry I. of England.² It does not seem possible to discover the precise causes which may have determined this dedication. England had no doubt been involved in the conflict over " investiture " ; but while the treatise deals with this, it has more of the character of a formal political treatise than the works with which we have hitherto dealt.

The writer sets out the purpose of his treatise in the Prologue ; it is intended, he says, to bring some remedy to the dangerous conflict with respect to the relation of the royal and priestly authorities, and to correct the error of those who set the two authorities against each other, and maintain that the royal authority was not instituted by God, but only by men — an opinion which, he says, was widely diffused.

He sets out, therefore, with a formal repudiation of the phrases of Gregory VII.'s letter of 1080 to Hermann of Metz about the origin of secular authority,¹ and argues that the conception expressed in them was wholly false ; he proves this not only by the words of St Paul, " There is no power but of God, and the powers that be are ordained of God," but also by the analogy of the rule of man in the world and of the head over the members ; and he maintains that God had created a hierarchy of authority both on earth and in heaven.² There are two authorities, that is, the royal and the priestly, by which in this present life the Church is governed : they are both sacred, and must not be set against each other.³

The most important aspect of the treatise is, however, to be found in its statement of the position of the two authorities relatively to each other, and the authority of each over the persons who hold the other. He sets out their relative positions at the outset under the terms of a comparison with the relation of the Father to the Son in the Godhead. The king, he says, in the body of his kingdom, would seem to bear the image of the Father, and the bishop that of Christ. What exactly Hugh may have understood by this comparison is not clear ; it may be conjectured that it is a literary reminiscence of the phrases of Ambrosiaster in the fourth century, and of Cathulfus at the end of the eighth ; as we shall see presently, it is parallel to some phrases used in the anonymous ' Tractatus Eboracenses.' The whole meaning of the phrase is not clear, but Hugh draws out his own conclusion from it with sufficient precision. All the bishops of a kingdom are subject to the king, as the Son is subject to the Father, not in nature but " ordine," that the whole kingdom may be brought back to one beginning; and he illustrates this from the position of Moses, who had the " image " of the king in the Hebrew nation, while Aaron had that of the priest. He had already stated this principle of the subjection of the priest to the king in his kingdom in the Prologue, and returns to it in a later chapter.¹

This is then one aspect of the relation of king and priest, but there is another side to this. In another place, while he protests that the bishop must not take up arms against his king, Hugh also says that the bishop is as greatly superior to the king in the dignity of his ministry as the divine offices are greater than merely secular affairs, and that therefore if a bishop should be found blameworthy, his case must be dealt with not in the secular court, but in a general synod.¹ If the king has authority over the bishop, the bishop also has authority over the king.

The king is subject to the discipline of religion, he must give ear to the admonition of the bishops ; they have power to open and to close heaven to man, and therefore they may, if need arise, excommunicate even kings, and Hugh cites several cases of such excommunication.² It is clear that he does not agree with those defenders of Henry IV. who had doubted or denied the authority of the Pope to excommunicate emperors or kings ; he holds very clearly that the bishop or Pope has spiritual authority over all secular rulers, just as they have temporal authority over all bishops.

He does not, however, merely lay down in general terms the principle of the authority of the spiritual rulers over the temporal; he also makes it clear what were in his judgment the nature and the limitations of this authority. The bishop has spiritual authority over the king, but this authority may be abused, and the power of excommunication does not imply the power of absolving the king's subjects from their oath of allegiance—that is, the bishop has no power of deposing the king. It has sometimes happened that bishops have used their authority under the influence of passion rather than with a just judgment of the actual circumstances ; and such abuse of excommunication only tends to bring the authority of the law into contempt. Some bishops have taken upon themselves to absolve the king's subjects from their oath of allegiance, but this is an absurdity and an act of contempt against God, by whom they have sworn. It is true that there may be wrongful oaths which must not be kept, but it is evident that Hugh does not reckon among them the oath of fidelity which a man has sworn to a ruler, even though he may be excommunicated.¹

If Hugh is clear that the authority of the bishop does not extend to the deposition of the king, he is also emphatic that he must not take up arms against him, however wicked and unjust he may be.² It is the bishop's function to stand between the king and the people, to turn away the anger of kings and princes from their people, and to pray night and day for the welfare of both.¹ The bishop then has a spiritual authority even over kings, but this extends only to spiritual matters, and can be enforced only by spiritual sentences. On the other hand, while, as we have seen, all bishops are subject to the king in his kingdom, they are not subject to the secular courts ; but if they are charged with any offence, they must be brought before a " general synod."

In the second part of his treatise Hugh deals with the question of appointments to bishoprics, and he contends for what he conceives to be the reasonable place of the secular authority in these, but with this subject we have already dealt.² Two matters which we have not yet mentioned are of importance. The first is his condemnation of the assertion that the Pope could not be reproved by any one, and he points out that St Peter was rebuked by St Paul when he fell into error.³ The second is his detailed treatment of the place of the Emperor in the appointment of the Pope, and especially in cases of disputed elections, and he appeals to the decree of Pope Nicholas n.^x

The position of Hugh of Fleury is interesting and important : he criticises the action and what he conceives to be the principles of Hildebrand with great freedom and force, but he is also clear in upholding the dignity of the sacerdotal office and its authority even over kings.

It is here that we may best consider the strange contentions of the author of the treatises which we know as the ' Tractatus Eboracenses.' ² It is indeed difficult to say what is the importance we are to attach to them, but it is reasonable to recognise that there are important and significant parallels between some of their contentions and some of the phrases of Hugh of Fleury. We have just seen that Hugh says that the king bears the image of the Father, and the bishop that of Christ, and that it is therefore right that the bishop should be subject to the king in his kingdom. As we have said, it does not seem possible to determine what precise significance Hugh attached to these phrases, and how far they may represent merely a literary reminiscence of the words of Cathulfus in the ninth century and of Ambrosiaster in the fourth.⁸ It is with these phrases that we must compare the treatment of the relative position and authority of the king and the bishop, as it is set out by the author of the fourth of the ' Tractatus Eboracenses.' It would seem clear that the treatise belongs to the time of the Investiture dispute between Anselm and the Elings of

England.

The king, he maintains, and the priest are both anointed by God, but the priest represents the human nature of Christ, in which he is inferior to the Father, while the king represents Christ's divine nature, in which he is equal to the Father ; the priest represents Christ as suffering death, and offering himself as a sacrifice to God the Father, the king represents Christ as about to be crowned with glory and honour, and to reign for ever in his heavenly throne over all authorities and powers. The angel of the Annunciation said to Mary, " The Lord will give him the seat of his father David," not of his father Aaron, for God gave David authority even over priests. It is therefore just that the king should have power and authority even over the priest.¹

The author urges that Moses and Joshua and the five kings of Israel were in the same way superior to the priests,¹ and he then restates the view that the royal power is greater than the priestly, for it represents Christ's divinity, which is greater than his humanity, and it is therefore right that the king should rule over the priest and institute him.² The unction of the king is in one sense the same as that of the priest, in another sense it is greater, for the unction of

the priest is after the example of that of Aaron, or of the apostles, while that of the king is after that of Jesus Christ, whom God anointed before the ages above his fellows.¹ The king is therefore superior to the priest and rules over him, and the author quotes some passages from the letter of Gregory the Great which illustrate his deference and obedience to the emperor.²

In other passages he claims for kings the power of the keys, though what exactly he meant by this is not very easy to say,³ and the chief authority in calling together the Councils of the Church, and the right of presiding at them.⁴ He maintains that the king is not to be thought of as a mere layman, for he is the Lord's Christ,⁶ and, in another place, that the king can remit sins and offer the bread and wine at the sacrifice of the mass, as indeed he does on the day of his consecration.⁶

After all this it seems a somewhat small matter that he should claim that the king is entitled to invest the bishop with the pastoral staff, and indeed it is rather noticeable that he is careful to explain that in doing this he is not conferring upon the bishop his rank (*ordo*) or the "*ius sacerdotii*," but only the temporal possession and the guardianship of the Church, and the power of ruling the people of God.¹

in the second place, he urges that the archbishop was also the representative of Peter, that he holds that authority of binding and loosing which Christ gave to Peter, and that there should therefore be no question of superiority between the Archbishop of Rouen and the Roman Pontiff, and that neither could judge the other. No one can judge a bishop but God only.¹ These contentions are sufficiently drastic in their character, but the author goes still further.

He discusses the question whether the Archbishop of Rouen could rightly be expected to recognise the authority of the Archbishop of Lyons, and contends that there was no justification for this. The supporters of Rome, he suggests, might say that he must obey the commands of Rome, for it had been decreed that the Roman Church should be the mother and lord of all Churches. He admits that this had been

decreed by the Bishops of Rome and their followers, but, he maintains, this had not been done by Christ or his apostles. If any Church was the mother of other Churches, it was that of Jerusalem. The truth was that Rome had been set over other Churches, not by the authority of Christ and his apostles, but by that of man, and this because of the glory and authority of the imperial city. The position of Rome rested not upon legitimate authority but upon usurpation, even though this had arisen from the necessity of avoiding divisions. Originally the Church had been governed by the common council of the presbyters : it was only the fear of division which had led to the rule that one of the presbyters should be set over the others, and have the care of the whole Church.¹

The fifth Tractate, which is attributed by Bbhmer to the same period of the Investiture conflict in England as the fourth, renews the attack upon the Papacy in very strong language. The author contends that the Pope commanded much which Christ had not commanded, and

he complains bitterly of the intolerable burden which the Pope imposed upon the bishops in compelling their frequent attendance at Rome. He complains that the bishops were compelled to sell the goods of their churches in order to satisfy the greed of the papal officials. He contends that if the Pope excommunicated bishops because they were not obedient to him in such matters as those mentioned above, the excommunication was void and of no effect.¹ He con-

demns vehemently the action of the Pope in exempting many of the abbeys from episcopal jurisdiction, and maintains that such exemptions ought not to be recognised, for they are contrary to God's ordinance, and the Pope has no authority to change this.¹ He denounces the attempt of the Popes to destroy the authority of the king in the rule of the Church ; this contradicts the principle laid down by Pope Gelasius that the world, and by the world here is meant the Church, is governed by the two authorities, the priestly and the royal. By the royal authority in the Church he here clearly means the right of "investiture," and he maintains again that the king is no mere layman.²

It is difficult to say what importance we are to attach to these very abnormal contentions, to determine how far they represent tendencies of thought common in some circles, or are merely individual opinions. The parallel to some of Hugh of Fleury's words is obvious, and the ultimate literary source of the conceptions may be the same ; but while Hugh in using these phrases is also careful to guard against the possibility of misinterpretation, and to assert the superior dignity of the spiritual office, the author of these Tractates seems to be anxious to press his argument far beyond what was needed to maintain either the right of royal "investiture," or the divine authority of the Temporal power.

We have already considered in detail the position of Gregory of Catino as expressed in his treatise, ' *Orthodoxa Defensio Imperialis*,' written probably in the year 1111, with regard to the impiety of revolt against the Temporal power, and the exercise of the right of " investiture " of bishops by the king or emperor.¹ He uses, however, some important phrases of which we must here take account. In one place he says that it was God who had established in the Church princes and higher powers, for whom the Apostle bids us always to pray ; and we ought to think of the King as the head of the Church. It is not unseemly that the prelates of the Church should receive "investiture " with staff and ring from the Emperor, for if the prince is head of the Church he should not be excluded from the " creation " of the office or ministry of his members.² The title of Head of the Church

as applied to the secular ruler is strange and unusual, and it is difficult to know what precise significance Gregory attaches to it. It may possibly be connected with the stress which he lays upon the unction of kings and emperors,¹ but Gregory does not himself make the connection.

Placidus of Nonantula, in his treatise, ' *Liber de Honore Ecclesie*,' probably written in 1112, is concerned primarily with the questions of " investiture " and of the sacred character of the property of the Church, and we have already considered his work at some length in relation to this matter.² This work is, however, of great importance in relation to the matter we are now concerned with—that is, the principles of the relations of the temporal and spiritual authorities, for we find in it the first clear example of the interpretation of the " Donation of Constantine " in the sense in which it was later understood. As we have attempted to show, it is clear that in its original sense this was related to the claim of the Roman See to succeed to the Byzantine authority in the Exarchate, and the other possessions which it still held in Italy in the latter part of the eighth century.³

Placidus seems clearly to understand the " Donation " as meaning that Constantine bestowed upon Pope Silvester his whole authority in the West, and so far the position of Placidus seems to be quite clear, but beyond this he is not easy to interpret. He says that inasmuch as Constantine had rendered honour to the Apostle (Peter), and had left the western kingdom to the vicar of Peter, God granted him to hold the whole Roman kingdom ; for Pope Silvester,

although Constantine had granted it, followed the example of Christ, and would not suffer the crown of the kingdom to be placed upon his head, but rather desired Constantine in holding

the kingdom to render his devoted service to the Church.¹ What exactly Placidus may have meant is difficult to say. He may possibly mean simply that Silvester refused to accept the political authority over the West, but he may also, and more probably, mean that while refusing to exercise this in his own person, he desired Constantine to exercise it as the representative or servant of the Church. The latter is perhaps suggested by the context, for he seems to use the action of Pope Silvester as a precedent for the tenure of dukedoms and the other great temporalities by the Church. It is unfortunate that the subject is merely mentioned incidentally by Placidus, but we shall recur to it presently when dealing with Honorius of Augsburg.

We have in the earlier part of this volume traced the very significant development, in his successive treatises, of the attitude of Geoffrey, the Abbot of Vendome, to the " investiture " question,¹ and in one of these, written probably about the year 1119, there now stands a passage of considerable importance in relation to our present subject.² The treatise belongs to the last years of the " investiture " controversy ; and while Geoffrey still repudiated firmly the concession of the " investiture " with ring and staff, he was prepared to admit that the Emperor might invest the bishop with the temporalities of the diocese. In this passage Geoffrey declares that it is by the divine law that we are ruled by kings and emperors, and that it is by the same law that " we " owe them honour and reverence ; and he seems clearly to mean the clergy as well as the laity. He goes on to urge the great mischiefs which arise when the " regnum " and the " sacer- dotium " are in conflict with each other. Christ willed that both the spiritual and the material sword should be used for the defence of his Church. Finally, and this is the most significant thing, he urges the great danger of an unwise use of the power of excommunication ; he urges that it is very doubtful whether it is wise to excommunicate any one who is supported by a multitude of men, lest greater scandal should arise than the good which is hoped for from the exercise of strict justice.⁸

It is evident that Geoffrey had no doubt about the divine source of temporal authority, and his doubt about the wisdom of the unrestrained use of excommunication is very significant in one who was a determined supporter of the papal position.

The last treatise which we have to examine in this portion of our work is that entitled ' Summa Gloria,' written by Honorius of Augsburg.¹ The treatise was probably written not long after the Settlement of Worms, and from the standpoint of a resolute upholder of the papal tradition ; but Honorius is not so much concerned with the circumstances of the conflict of the years from 1076 to 1122 as with an attempt to analyse and compare the origin and nature of the two great authorities. His position is rather strange, for his theories are in several points very extreme, while his practical conclusions are in some respects moderate and conciliatory.

He begins and concludes his treatise with an emphatic statement of the superior dignity of the " sacerdotium," and illustrates this in various ways. He takes Abel to be a type of the priestly office, Cain of the royal; Shem he identifies according to a patristic tradition with Melchizedek as the first true priest, while the Roman empire, he says, is descended from Japheth, and he finds similar types of the two authorities in Isaac and Ishmael, and in Jacob and Esau. As the peasant is subject to the deacon, the soldier to the priest, the prince to the bishop, so the king is subject to the Pope.¹ He is met, however, with the objection that the king is not a layman, for he is anointed with the oil of the priests ; but he sets this contention contemptuously aside, and points out that on the admission of all men the king has no ecclesiastical office, but is evidently a layman who cannot perform any of the functions which belong to an ecclesiastic ; and he makes the technical distinction that the king is anointed only with oil, while the priest is anointed with " chrism," and points out that the king is anointed not by another king, but by the priest.¹

Honorius is therefore clear that the priestly dignity is much greater than the royal, but he goes much further than this, and sets out a theory of the origin and nature of secular authority which was, as we think, entirely new, and even contradictory to the normal tradition. As we have frequently pointed out, it was the normal doctrine of the Fathers that the Temporal power

had been instituted by God. Gelasius in the fifth century had maintained that Christ himself had created and separated the two powers which were to govern the world, and from the ninth century this had been modified into the doctrine that Christ had established the two powers in his Church.² Honorius puts forward a wholly different view. He first urges that from the time of Moses to that of Samuel the Israelites were governed not by kings but by priests and prophets, that it was Samuel who created the kingship, that it was the priests and prophets who continued to elect and anoint the king, and that after the Exile it was again the priests who ruled over Israel.¹ When Christ the true King and Priest came, he gave his Church laws, and he created the "sacerdotium," not the "regnum," to rule over his Church, and over the "sacerdotium" he set Peter, who left this authority to his successors. Thus from the time of Christ to that of Silvester the Church was ruled only by priests.²

This is indeed a far-reaching and fundamental conception, and one which seems inconsistent with the traditional ecclesiastical theory, and the statement is followed by an application and interpretation of the "Donation of Constantine," to which, so far as we know, there is no earlier parallel. The time at last came, Honorius says, when God changed the time of persecution to the time of peace, and transformed the rebellious empire of the pagans into the kingdom of Christian men. Constantine was converted by Silvester, the prince of the priests of the Church, and placed the crown of the kingdom upon the head of the Roman Pontiff, and decreed that no one should thenceforth receive the Roman Empire without his consent. Silvester, however, recognised that those who rebelled against the priests could not be constrained by the sword of the Word of God alone, but only by the material sword, and joined the same Constantine to himself as a fellow-worker in the field of the Lord, and as a defender of the Church against the pagans, Jews, and heretics, granted to him the sword for the punishment of evildoers, and placed upon him the crown of the kingdom for the praise of the good. From this time, therefore, it became the custom that the Church should have kings and judges for secular judgment. It is only, however, secular judgments which belong to kings, and Constantine refused to take any part in the judgment of bishops. Thus as the soul is of greater dignity than the body, and the spiritual than the secular, the "sacerdotium" is of greater dignity than the "regnum," which it establishes and orders.¹

The position of Honorius is indeed novel and startling, such an interpretation of the "Donation of Constantine" had, as far as we know, never been put forward before. Placidus had, as we have seen, understood the "Donation" to mean that Constantine transferred the western part of the Empire to the Pope, and he may mean that Silvester granted it to Constantine to administer it as the servant of the Church; but Honorius interprets the "Donation" as signifying the complete surrender of all political authority to the Pope, and he seems to hold that from that time onwards all such authority was really held by the secular ruler from the "sacerdotium." This, however, is not all, for Honorius seems to mean that the action of Constantine was only a recognition of the normal divine order; he maintains that Christ had not created the two powers to rule the Church, but only the "sacerdotium," and it was to it that under the divine order all authority properly belonged. It would seem, therefore, that Honorius at least suggests the doctrine maintained by some later writers, that all authority, temporal as well as spiritual, is vested in the Church and in its head, the Pope, and that all secular rulers hold an authority which is delegated to them by the Spiritual power.¹ How far this ever became the normal doctrine of the Middle Ages we shall have to consider later, but it is certainly true that this is the first explicit affirmation of it. It may, indeed, be suggested that it had been put forward by Gregory VII., but though it may be maintained that it is implied in his claims,² it is certainly not explicitly stated.

It is, perhaps, to this conception that we should relate Honorius's declaration that the Emperor should be elected by the Pope, with the consent of the princes and the approval of the people. In another place, indeed, he maintains that it is the bishops rather than the secular princes who were the real electors, but the main stress of Honorius's contention seems to be laid on the assertion that the authority of appointment lay with the Pope and the spiritual

princes, and he concludes by urging that the “ regnum ” is lawfully subject to the “ sacerdotium,” inasmuch as it was the “ sacerdotium ” which established the “regnum.” ³

In comparison with the far-reaching character of these conceptions it seems a comparatively trivial matter that Honorius also maintains that the election of the Pope belongs to the cardinals with the consent of the bishops and the clergy of the city of Rome, and the acclamation of the people, and that he omits all reference to the Imperial consent or approval, and that he maintains also that the bishop of each city is to be elected by the clergy of the diocese, with the acclamation of the people, and is to be invested with the ring and staff by the Pope.¹

We must now, however, observe that there is another aspect of the principles of Honorius with respect to the relations of the Spiritual and Temporal powers, not indeed formally inconsistent with that which we have just observed, but of considerable importance as modifying some conclusions which might be drawn from it.

He maintains emphatically that while the king as a layman must be obedient in divine matters to the “ summus sacerdos,” that is the Pope as head of the Church, so also the Pope and all the clergy are subject in secular matters to the king, and he maintains that this was true also in the older dispensation : the kings were appointed by the prophets and priests, and obeyed them in matters which belonged to the divine law, but the prophets and priests obeyed the kings in all secular matters.¹

In other passages he sets out the theory of the origin and nature of temporal authority with precision and in some detail. He follows the Stoic and Patristic tradition that God did not originally make man to be lord over his fellow-men, but that it came about through men’s sin and irrational conduct that God set some in authority over others in order to constrain men by fear to live a true human life. The government of the Church in the world requires the two swords—the spiritual, which is in the hands of the “ sacerdotium,” and the material, which is in the hands of the “regnum,” with which it punishes those who continue in evil.² The Temporal power is thus an institution of God Himself, and must be obeyed in secular matters, not only by the people but by the clergy. The Christians of early times obeyed the Pagan emperors in secular matters, while they obeyed only God in spiritual, for it is not only good rulers who must be obeyed but also the evil. St Paul and St Peter taught plainly that the secular authority was ordained by God.¹ Finally, it would seem that Honorius held that even if the king should rebel against the Roman See, or should fall into heresy or apostasy or schism, while the faithful must withdraw themselves from all communion with him, he must be patiently endured.²

If we now try to sum up the general character of the principles stated and developed in the writings which we have examined in this chapter, we find that it is doubtful how far these writers had a completely reasoned conception of the whole subject. While, also, there are obvious and far-reaching differences between them, it is also evident that on some points there was a substantial agreement.

There was, in the first place, no doubt among them that the temporal authority was a divine institution as well as the spiritual. Deusdedit and Honorius are very careful to urge this, even though they point out that it had its origin in sin. When, therefore, Hugh of Fleury and Gregory of Catina urged this divine authority, and even when Hugh repudiated what he understood to be the meaning of the phrases of Hildebrand about the origin of secular government, they were not really maintaining a principle different from that which Deusdedit and Honorius would have admitted to be true.

Again, Deusdedit was, as we have seen, very anxious that it should be understood that he did not doubt that each authority had its proper sphere in which the other should not interfere ; and Geoffrey and Honorius assert very emphatically that all the clergy, and Honorius specifically includes the Pope, are subject to the temporal authority in secular matters.

There is traceable also a tendency to approximation between them with regard to some of the practical questions raised by the great conflict. If Sigebert of Gembloux doubted whether a king could be excommunicated, and suggested that the excommunication of Henry IV. had

been unjust, Hugh of Fleury, though certainly a vigorous critic of the papal policy, was clear that the bishop could excommunicate the king ; w'hile Geoffrey, though a stout defender of the papal cause, doubted, not perhaps the lawfulness but certainly the wisdom of excommunicating kings. And again, while Sigebert, Hugh of Fleury, and Gregory of Catino repudiated emphatically the assertion that the Pope could depose the king or absolve his subjects from their allegiance, Honorius seems to mean that while the faithful must withdraw themselves from communion with a heretical and schismatic king, his political authority must be patiently accepted.

It may therefore be said that we find in these writers a real agreement as to the divine origin of the Temporal power, and a tendency to approximation in their attitude to the practical questions of the time. We have endeavoured in the earlier part of this volume to trace the stages through which an agreement was finally reached on the " investiture " question, and it would seem to be true to say of some of the papalist writers that they were primarily occupied with the vindication of the spiritual freedom of the Church, and had no desire to urge that the Church or the Pope possessed any general supremacy over the Temporal power.

On the other hand, it may be said that in some of these writers we can trace a further development of the theory of the relations of the two powers. Hugh of Fleury asserted that the king bears the image of God the Father, and the bishops that of Christ, and that therefore all the bishops of the kingdom were rightly subject to the king, as Christ is subject to the Father, not in nature, but " ordine," that the " univer- sitas regni " may be reduced " ad unum principium."

The author of the ' Tractatus Eboracenses,' as we have seen, used parallel phrases, but pressed the matter much further, and seems to maintain that the royal authority is greater in its nature than the priestly, and that the king, who is not a mere layman, has a great authority even in ecclesiastical matters. Gregory of Catino said that the king was the head of the Church, and that therefore it was right that the bishops should receive "investiture" with ring and staff from the prince, for as he was the head of the Church, he should not be excluded from the " creation " of the office or ministry of his members. It is indeed not easy to interpret these phrases,

but we shall probably not be far wrong if we interpret them as representing the reaction against the ecclesiastical claims. We must, however, observe that it was the same Hugh of Fleury who emphatically asserted that the bishop was as superior to the king in the dignity of his ministry as the " divine offices " were superior in their sanctity to secular matters, and that he was not Hable to the judgment of the secular courts. Hugh and Sigebert, however, also pointed out how often it had been the emperors by whom the corrupt conditions of the Papacy had been reformed, and they refused to recognise that the Pope was above all human judgment, and urged that he should submit to reproof and correction.

If these writers may be taken as representing the most advanced aspect of the position of the defenders of the temporal authority, Placidus and Honorius represent a new development of the papalist position. We have discussed their treatment and interpretation of the "Donation of Constantine," but important as this may be, it is of little importance when compared with Honorius's theory of the creation of the secular authority by the Church, and of the subordination of the temporal authority to the spiritual. This position of Honorius is very interesting, and we shall have occasion to refer to it later ; here we can only say that if it may have some relation to some of the claims of Hildebrand, and if it may be argued that it was implicitly contained in these claims, it must be clearly understood that there is no parallel to it in the literature which we have been considering in these two chapters.

CHAPTER IV.

THE DEVELOPMENT OF THE FEUDAL AUTHORITY OF THE PAPACY.

WE must consider briefly another aspect of the policy of Gregory VII. ; this is what appears to be his persistent attempt to establish a claim on the part of the Papal See to feudal lordship over various countries and provinces. We cannot, indeed, say that this policy had no antecedents before the time of Gregory's pontificate ; it is, indeed, obvious that some of the

most important steps in the development of it were taken by his immediate predecessors ; but it may be contended that Hildebrand had even then inspired this policy.

There is at least one important reference to the matter as early as the pontificate of Silvester H. This is contained in a letter in which it is stated that Stephen, King of Hungary, had given himself in allegiance to the Pope.¹ The authenticity of the letter is, however, questioned by some critics, though it is defended by others. It is, however, clear that, even if the policy of establishing the feudal lordship of the Papacy over various States may be traced back to earlier times, it was with the immediate predecessors of Gregory VII. that it became important. It would appear reasonable to say that the policy represents an attempt to organise a system which should secure the political independence of the Papal See in its relations both to the Empire and the city of Rome. We shall have occasion to see the important consequences of this policy in the history of the twelfth and thirteenth centuries.

The first and the most important development of this policy is to be found in the establishment of feudal relations between the Papal See and the Normans in Southern Italy. Cardinal Deusdedit has preserved in his ' *Collectio Canonum* ' the promises of fidelity which Robert Guiscard took in the year 1059 to Pope Nicholas H. He styles himself Duke of Apulia and Calabria by the grace of God and of St Peter, and as about to become Duke of Sicily by their help ; and in confirmation of this grant and in recognition of the fidelity which he owes, he promises an annual tribute to St Peter and Pope Nicholas and his successors. He promises that he will be faithful to the holy Roman Church and to Pope Nicholas, and that he would swear fidelity to no one except with the reservation of fidelity to the Roman Church.¹ Deusdedit also gives the oath of fidelity which Richard, Prince of Capua, and Jordanus, Prince of Capua, took to Pope Alexander H.²

It is significant of the development of this policy that Pope Alexander H. wrote to William the Conqueror declaring that the kingdom of the English since the time of its conversion to Christ had been " *sub apostolorum Principe manu et tutela,*" and had paid an annual sum to the Apostolic See, of which a part went to the Pope, and a part to the Church of St Mary, which was called " *Schola Anglorum.*"⁸

The claim to feudal supremacy was, however, emphatically repudiated by William; he refused to do fealty on the ground that he had not promised to do this, and that his predecessors had never done it, while he promised that the money should be paid.¹

It is then clear that the policy of extending the feudal authority of the Papacy was well developed before the accession of Gregory VH. to the papal throne, but it is also clear that during his pontificate he lost no opportunity of extending this. He was, in the first place, careful to maintain this relation with the Normans in South Italy. The oath of fidelity, which was made by Richard of Capua to Gregory VH. in September 1073, contains very important provisions. Richard styles himself Prince of Capua by the grace of God and St Peter, and promises that he will be faithful to the holy Roman Church and to Gregory the " *universal* " Pope. He promises that he will help him and the Roman Church to acquire and defend the " *regalia* " and the possessions of St Peter against all men, and that he will help Gregory to hold in safety and honour the Roman Papacy. He will swear fidelity to the King, Henry, when he is admonished to do so by Gregory and his successors, but always saving his fidelity to the Roman Church. In the event of a vacancy in the

papal throne, he will render his help according to the admonition of the best cardinals and the Roman clergy and people in the election of a Pope.¹ The form of oath taken by Robert Guiscard to Gregory VII. in June 1080 is practically the same.² It is noteworthy that in these oaths, while the Normans express themselves as willing to take the oath of fidelity to the German King, they do this subject to the approval of the Popes, and subject to the reservation of their fidelity to the Roman Church. These phrases are strictly parallel to those of an oath made to a lord, subject to the reservation of the obligation to the overlord. It may therefore be said that Gregory correctly describes the relations of the Normans to the Papal See when in a letter of 1076 he says that they desired to have St Peter as their only lord and emperor after God.³

A similar claim to lordship in Spain is represented in letters written by Gregory VII. in 1073

and 1077. The first was written in relation to projected attempts to recover parts of Spain from the Saracens, and Gregory claims that the Kingdom of Spain had from ancient times belonged to St Peter, and that it still, even though occupied by the pagans, belonged to no mortal man but to the Apostolic See ; he has, therefore, granted to Count Evulus de Roceio, who desires to deliver this land from the pagans, that he shall hold any territory, from which he succeeds in driving them out, from St Peter.¹ The letter of 1077 repeats the same claim that Spain belonged by the ancient constitutions to St Peter and the Roman Church.²

Another claim which was urged with much vehemence by Gregory VII. was that the Kingdom of Hungary belonged to the Roman See. In a letter of October 1074 to Solomon, King of Hungary, he urged in support of this claim, first, the alleged action of King Stephen in surrendering his kingdom with all its rights and powers to St Peter, and secondly, that the Emperor Henry II., after his victory over the King of Hungary, had sent the lance and crown to the shrine of St Peter, and had thus recognised that the authority belonged to him. He reproved Solomon severely for having accepted the kingdom as a fief from the King of the Germans, and threatened that he would lose it unless he recognised that his kingdom was a fief of the Apostolic See, not of the King of the Germans.³ In two letters of the following year Gregory

supported Geusa in his claim to the Hungarian throne on the ground that Solomon had forfeited his right by receiving it as a fief from the German King.¹ The action of Gregory here is the more noticeable in that it involved a conflict with the claims of the German King to feudal supremacy over Hungary.

In a letter of the year 1075 to Demetrius, King of the Russians, Gregory VII. says that Demetrius's son had come to Rome and had urgently prayed that he might receive that kingdom by the grant of St Peter through the hands of the Pope. Gregory, understanding that this request was made with the consent of Demetrius, had assented to it, had conferred the kingdom upon his son in the name of St Peter, and promises that he will give him the support of the Holy See in all just matters.¹ In another letter of the same year Gregory writes to Sweyn, King of the Danes, that the law of the Roman Pontiff reached farther than that of the Emperor, and that where Augustus reigned, Christ reigned. Sweyn had asked Pope Alexander II. for the "patrocinium" of St Peter, and Gregory desires to know whether this was still his wish.² In a letter of 1077 to the Corsicans, he bids them know that their island belongs lawfully to no other authority than that of the Roman Church : those who refuse to recognise this are guilty of sacrilege ; and he rejoices to learn that they desired to recognise the rights of St Peter, and is prepared to send them armed help.³ In a letter of 1079 to Wezelin, he warns him that he must not take up arms against him whom the apostolical authority had established as king in Dalmatia, and bids him know that whatever

he may do against this king will be done against the Roman See.¹ Deusdedit has preserved the oath of fidelity which Demetrius had taken to Gregory VII. on receiving the Kingdom of Dalmatia. He acknowledges that he had been invested with the Kingdom by means of the banner, sword, sceptre, and crown, under the authority of the Pope, and promises obedience and fidelity in the strict terms of the feudal obligation, and the payment of a regular annual tribute.³ In one letter Gregory even claimed that Charles the Great had given Saxony to St Peter, and that the Saxons possessed documentary evidence of this.¹ Finally, Gregory's Register contains, under the year 1081, a declaration of Bertrand, Count of Provence, that he surrendered all his hereditary dignity to God, St Peter and St Paul, and to Gregory and his successors.²

It is reasonable to compare this very highly developed policy of extending the feudal authority of the Roman See with the terms of Gregory VII.'s letter of 1081 to Altmann of Passau³; and we may not unreasonably think that that letter represents a design to extend the feudal authority of the Papacy even over the German kingdom.

PART IV.

THE CHURCH AND THE EMPIRE FROM

THE settlement of Worms secured peace between the Church and the Empire for more than thirty years, and when a new conflict arose the conditions and causes of the conflict were different. It is more difficult to say what was the nature of this peace ; there are some who look upon this period as one in which the Papacy had triumphed over the Empire, but it is very doubtful if this view can be seriously defended. The truth would rather seem to be that men were heartily weary of the conflict, and that there was little desire either on the one side or the other to renew it. It is no doubt easy enough to argue that the agreement of Worms had not settled things finally, and it is indeed true that no complete or final settlement of the question of the appointment to bishoprics and abbeys had been reached ; but as a matter of fact the settlement as a whole was not seriously challenged, and the changes which came, came gradually and without serious conflict.

An excellent monograph of Bernheim has brought out very clearly the extent and also the limits of divergence in the interpretation and application of the terms of the settlement.¹ It seems on the one hand to be clear that within a year of its conclusion a version of its terms was in existence which considerably extended the authority of the Emperor—a version which gave him power, in cases of disputed elections, to decide the matter by his own judgment, without the advice and judgment of the metropolitan and the comprovincial bishops.¹ In 1122 or 1123, after Worms, Henry V., in the case of a disputed election to the Abbey of St Gall, obtained a judgment from his court that in consequence of the dispute it was open to him to appoint whomsoever he wished.² It would seem that this was the tradition referred to by Otto of Freising in the *Gesta Friderici* in a passage which we shall deal with later,³ but it would not seem that either of Henry V.'s immediate successors, Lothair III. and Conrad III., made any attempt to assert such a right.

On the other hand, it would seem that some at least of those who procured the election of Lothair III. as Emperor in 1125 desired to modify the terms of the settlement in favour of the Church. According to the author of a very important account of this election, it was agreed at Mainz that the election of a bishop should be free, and not constrained by the presence and fear of the prince, and that the Emperor should invest the bishop, freely elected and freely consecrated, with the “*regalia*” by the sceptre, while the bishop should take the oath “*salvo quidem ordinis sui proposito*.”⁴ This would seem to mean that it was agreed that the terms of Worms should be modified in two important particulars—first, that the election should not be conducted in the presence of the Emperor ; and second, that the investiture with the temporalities should take place after consecration and not before.

Whether this statement can be taken as proving that an actual agreement was made upon this basis, and that Lothair was a party to it, is very doubtful; Bernheim, in another monograph, has made it clear that Lothair's actual administration did not conform to any such agreement, but rather that he normally maintained the terms of the agreement of Worms.¹

If we can trust a statement in a life of St Bernard, Lothair, when he met Pope Innocent II. at Liège in 1131, taking advantage, no doubt, of the disputed election to the Papacy, urged upon him the restoration of investiture as it had been exercised before ; but St Bernard, the most powerful supporter of Innocent's claim to the papal throne, was present, and by his influence contributed greatly to the papal refusal.² The statement is confirmed by some other references.³ It is possible that it is in some connection with this incident that we should place the issue by Innocent II., after his restoration to Rome and the consecration of Lothair as Emperor in June 1133, of the document which emphatically forbade bishops and abbots in the German kingdom to take possession of the “*regalia*” until they had received them from the Emperor.¹ It would seem probable that this was issued by the Pope as some satisfaction to the imperial demand, and the matter was one of great importance, for it was just upon this distinction between the temporal and the spiritual authority of bishops or abbots that the agreement of Worms rested.

The position of Lothair's successor, Conrad II., has been carefully examined by Witte in a dissertation on the episcopal elections during his reign ; and it would appear that Conrad was not inclined or able to insist upon a strict observance of the provisions of Worms. Sometimes, and especially in his own personal territories, he asserted them ; but at other times, and in other parts of the Empire, he could not, or at any rate did not, enforce them. Frequently he was not present at elections, and the investiture with the temporalities followed instead of preceding the consecration ; in one case the Pope seems to have claimed the right to determine a disputed election instead of leaving this to the King, with the counsel and judgment of the metropolitan and the bishops of the province.²

On the whole, however, it is true to say that the fundamental principle of the settlement of Worms was fully recognised—that is, the distinction between the spiritual position of the bishop and his temporal lordships and possessions ; and therefore, that while it was the part of the ecclesiastical authority to invest him with the former, it was for the temporal authority to grant the latter. And this settlement had for the time brought peace in the relations between the Empire and the Papacy.

We have now to consider the circumstances and the principles of the conflict between Frederick Barbarossa and the Popes who were his contemporaries.

Frederick I. was elected by the princes at Frankfurt in March 1152, and the ecclesiastical relations of his first years were tranquil. He did, indeed, maintain the rights given to the secular power by the agreement of Worms, and in one case at least he interpreted these in a manner which was not consistent with what seems to be the genuine text, but was probably founded upon that version which has been preserved in the 'Codex Udalrici.' Otto of Freising, in the 'Gesta Friderici,' says that the tradition of the "Curia," that is, the royal court, was that in the case of a disputed election the king could appoint as bishop whomsoever he wished, with the counsel of his "optimates." ¹ It was apparently in virtue of this claim that Frederick, in 1152, procured the appointment of Weidmann, the Bishop of Zeitz, to the Archbishopric of Magdeburg. Pope Eugenius III., in a letter to the bishops of Germany, rejected the appointment, but not on the ground of the provisions of Worms, that the king as emperor could only decide upon such a point with the advice and judgment of the metropolitan and the provincial bishops, but on the ground that Frederick had overridden the rights of the electors.²

On the other hand, Frederick showed himself desirous to meet the demands of the Papacy for his support. The relations between Frederick and the Popes at this time are best represented by the terms of the Treaty of Constance, which was concluded early in 1153. By this treaty Frederick bound himself to support the Pope against the Greeks, the Normans, and the rebels in Rome, while the Pope promised to crown him as Emperor, to support him against any who should attack the "justice and honour" of the kingdom, by excommunicating them, and to resist the Greeks.¹

In 1155 Frederick was crowned Emperor in Rome. In 1156, however, the papal policy seems to have undergone a change. At the time when the Treaty of Constance had been signed, the Popes were on bad terms with the Normans, and looked for support against them to Frederick, but in 1156 Hadrian IV. came to terms with the Normans, and the new relation was embodied in the Treaty of Beneventum. The most important political provisions of this treaty are as follows : Hadrian recognised William and his son Roger and their heirs as Kings of Sicily, Dukes of Apulia, and Princes of Capua, together with Naples, Salerno, and Amalfi, and the territories belonging to them, while they on their part swore fidelity to Pope Hadrian and his successors and the Roman Church, and did liege homage.²

It was not, however, till 1157 that a serious dispute arose between Frederick and Hadrian IV., and then it was not about any actual question of policy, but about the use of a phrase by the Pope which seemed to imply that Frederick held the Empire as a fief from the Pope. The circumstances were as follows. Archbishop Eskil of Lund, in Sweden, on his return from Rome, had been seized and held to ransom by some turbulent persons in Burgundy. For some reason

Frederick refused to take any active steps to procure his release or to punish the offenders, and Hadrian IV. wrote to him in September to remonstrate with him. After urging upon him the duty of intervention, he reminded him of the affection and joy with which the Roman Church had received him, how it had conferred upon him the fulness of dignity and honour with the imperial crown, and that it would gladly have conferred upon him greater “beneficia.”¹

This letter reached Frederick while he was holding a diet at Besangon, and according to the report of Otto of Freising, it caused the greatest indignation among the princes, because they understood the letter to imply that the German Kings held the Empire and the Kingdom of Italy by the grant of the Popes. They were, according to Otto, much disturbed by the recollection that in the palace of the Lateran, under a portrait of the Emperor Lothair III., there was written an inscription in the following terms :—
“Rex venit ante foras, iurans prius urbis honores, Post homo fit papae, sumit quo dante coronam.”¹

The tumult caused by the reading of Hadrian’s letter was increased by the injudicious words which one of the papal legates was understood to have used : “From whom, then, has he the Empire, if not from the Pope ?” and the legates might have been killed if Frederick had not intervened and sent them back to their lodgings, ordering them to depart on the following morning, and to return without delay to Rome.²

In October Frederick issued a circular letter recounting the circumstances of the papal legation and the contents of Hadrian’s letter. He complains that the head of the Church, who ought to represent the peace and charity of Christ, was becoming the cause of discord and the source of evil; and he declares that he received the Kingdom and Empire, by means of the election of the princes, from God alone, who had subjected the world to the rule of the two swords ; and he charges any one who should maintain that he had received the imperial crown as a fief (“pro beneficio”) from the Pope with the defiance of the doctrine of St Peter, who had bidden men to “fear God and honour the king.”¹

The Pope in the meanwhile was much irritated at the treatment of his legates and at the measures which, as he alleged, Frederick had taken to prevent any one from Germany going to the Apostolic See, and wrote a letter to the German archbishops and bishops complaining of Frederick’s conduct, and urging them to resist his actions and to persuade him to adopt a more reasonable policy. He admitted, it should be observed, that the trouble had arisen about the phrase which he had used “insigne videlicet corona) tibi beneficium contulimus” ; but he did not, so far, offer any explanation of the phrase.² The German bishops replied courteously and deferentially, but firmly, that the terms used in the first letter were the cause of all the trouble, and that they were so unusual and unprecedented, and of so sinister an ambiguity, that they could not defend nor approve them. They had, as the Pope desired, discussed the matter with the Emperor, and they report his reply. In this Frederick made it plain that, while he desired to exhibit all due reverence to the Pope, he would not tolerate any departure from legal and customary usage. He claimed the freedom of the imperial crown as being derived from the “beneficium divinum,” and states in some detail the order of election and coronation. He denied that his behaviour to the cardinals had been dictated by contempt of the Pope, but he could not permit them to carry any further such documents as were an offence to the Empire. He had not forbidden any one to come or go on reasonable business to or from Italy, but was determined to check those abuses by which the churches of the kingdom were burdened. And then, evidently with reference to the painting which has been already described, he says that that which had begun with a picture was now being carried out in a writing, and that it was now attempted to make this writing authoritative. This he would not tolerate, but would rather resign the crown than suffer such a degradation of the Empire. Such pictures must be destroyed, and such letters retracted if there was to be friendship between the “regnum” and the “sacerdotium.”

The bishops add that they had heard from the Emperor what they evidently considered to be disquieting reports about a treaty with Boger and William of Sicily—referring, no doubt, to

the Treaty of Beneventum, which, as we have seen, had been concluded between Hadrian IV. and William I. of Sicily in 1156; and they had heard also of other treaties.¹

Tn June 1158 papal envoys came to Frederick at Augsburg, bearing letters in which Hadrian IV. was careful to explain away the offensive phrases which, he said, had been misunderstood. The word "beneficium" had, he declared, no such meaning in his letter as had been attributed to it. It did not mean a "fief," but only a benefit; and it was only the wilful malice of men who did not desire the peace of the Church and kingdom which had misinterpreted it.¹ Frederick received the explanation in a friendly way, and the amicable relations with Borne were for the time restored.

It is not easy to arrive at a clear judgment about the significance of these circumstances. It is very difficult to understand why Hadrian should have wished to pick a quarrel with the Emperor, and why he should have chosen such a way of doing it. The only important argument for th^ view that he used the phrase intentionally lies in the fact that he did not offer any explanation of it in his letter to the German bishops. On the whole, it appears very doubtful whether Hadrian's phrase was intentionally used to signify his determination to treat the Emperor as a vassal of the Holy See ; it seems more probable that it was used inadvertently. It is at any rate most important to observe that the supposed claim was immediately and emphatically repudiated by the German bishops, and that the Pope himself was careful to explain it away.

In the year 1159 there was again a dispute between Frederick and Hadrian IV., shortly before the death of the latter. The Bishop of Bamberg, in a letter to the Archbishop of Salzburg, cited by Otto of Freising in the 'Gesta Friderici,' reported that the Pope had sent two cardinals to Frederick, making certain very important demands, and laying down some very significant principles. The Emperor, he declared, must not send envoys to Borne without the knowledge of the Pope, as the magistracy of the city and all the "regalia" belonged to St Peter. The bishops in Italy were to take the oath of fidelity to the Emperor without doing homage, and were not to be required to receive the Imperial envoys in their palaces. He also demanded the restoration to the Roman Church of Tibur, Ferrara, Massa; the whole territory of the Countess Matilda, the whole territory from Aquapendente to Rome, the Duchy of Spoleto, and the islands of Sardinia and Corsica.¹

In his reply Frederick first pointed out that he could not answer on such important matters without the advice of the princes, but provisionally he replied as follows : He would not demand homage from the Italian bishops if they were willing to surrender the "regalia." He was willing to admit that his messengers need not be received in the bishop's palaces, provided these were built upon ground which belonged to the bishops, but if they were built upon the Emperor's land, they were properly the Emperor's palaces. As to the Pope's demand that he should not send envoys to Rome, as all magistracy there belonged to St Peter, this, he said, was a serious matter requiring grave consideration ; for if the city of Rome were not under the authority of the Emperor, it would mean that he had only the appearance and the empty name of the Imperial power.²

It was apparently about the same time that Hadrian asked for the renewal of the treaty made with Pope Eugenius III. at Constance in 1153 ; but, as appears from a letter of Frederick to the Archbishop of Salzburg, Frederick refused, on the ground that Hadrian had violated the terms of this treaty by the treaty which he had made with William of Sicily at Beneventum, in the year 1156. Frederick contended that it was a breach of the agreement of Constance that the Pope should have made peace with the King of Sicily without consulting him.¹

The questions thus raised were no doubt serious and far-reaching, and might have produced a serious situation ; but other and graver questions arose.

It was in 1159 that Hadrian IV. died, and his death was followed by a double election to the Papacy. Roland was elected as Alexander III., and Octavian as Victor IV. The situation is set out very clearly in one of the works of Gerhoh of Reichersberg. He was one of the most energetic of the reforming clergy in Germany, but for some time hesitated in his attitude to the rival claimants. He was clear that, as far as the election itself was concerned, Alexander had been

legitimately and canonically elected by a majority of the cardinals ; but, on the other hand, he very gravely and seriously reports the contention of the supporters of Victor that both Alexander and the cardinals who had elected him had been engaged in a conspiracy against the Emperor. It was alleged that before the death of Hadrian

IV. they had made an agreement with William, the King of Sicily, and the Milanese, and ■with other enemies of the Empire, that they had bound themselves by an oath that on the death of Hadrian, they would not elect any one to the Papacy who had not been associated with them in this conspiracy, and that they had been bribed by William and the Milanese to undertake that Frederick should be excommunicated and should not be absolved without their consent.¹

It was under these circumstances that Frederick put forward two important principles: that it was for a General Council of the Church to consider the claims of the two aspirants to the Papacy, and to decide which of them was the legitimate Pope ; and that it was the duty of the Emperor to take the necessary steps to call together such a Council.

Frederick's position is very fully and clearly expressed in his letter of invitation to the German bishops to attend the Council which he summoned to meet at Pavia to deal with the matter. He interprets the words of Christ referring to the two swords as being related to the Roman Church and the Roman Empire, by which the whole world was ordered in divine and human matters. There is one God, one Pope, one Emperor, and there ought to be one Church ; but, grievous to relate, there seem to be two heads of the Roman Church. It is to avert the danger of such a division in the Church that the Roman Empire, which the divine providence has

created as a remedy for such a dangerous mischief, must take action for the safety of all, to avert such evils from the Church and all mankind. He has therefore summoned a solemn and general assembly to meet at Pavia in the Octave of the Epiphany, and has invited the two who call themselves Roman Pontiffs, and all the bishops of the Empire, of France, England, Spain, and Hungary, that by their examination, in his presence, it might be declared which of the claimants should lawfully obtain the rule of the universal Church.¹

It is important to observe precisely the nature of the claims which Frederick set out. He maintained that it was the duty of the Emperor to deal with such a situation as that which had arisen, but he did not claim that he had himself authority to decide between the claimants. His function, as he represented it, was to call together a general assembly of the bishops of the Church of all countries, and it was for them to consider and decide upon the justice of the rival claims—only, this was to be done in his presence. To put this in other words, this meant that, in the case of disputed elections to the Papacy, it was for the Church as a whole to decide the rights of the case, while it was the function of the Emperor to set the machinery of the Church in motion.

With this we should compare the terms of the letter in which Frederick invited Henry II. of England to send as many of his bishops and abbots as possible to the Council at Pavia, that by their judgment and that of the other ecclesiastical persons the unity of the Roman Church should be preserved.¹ In his letter to Alexander III. and his cardinals desiring their presence at the Council, the same positions were set out as in the letter to the German bishops, only they were stated with more precision. He claimed that it was his duty to protect (*patrocinari*) all the churches in his Empire, and more especially to care for the Roman Church, whose “ care and defence ” had been specially entrusted to him by the divine providence ; he expressed his grief at the dispute •which had arisen as to the election, and said that it was to remedy this evil that he had commanded to be held (*indiximus celebrandum*) a general court and assembly at Pavia, to which he had called the archbishops, bishops, abbots, and other religious persons, in order that, all secular judgment being excluded, this great matter of the Church might be decided by the sentence only of the ecclesiastical persons in such a way that God might be honoured, that no one should deprive the Roman Church of her “ integritas ” and justice, and that the city of Rome might be at peace. He therefore, in the name of God and of the Catholic Church, commanded and enjoined upon him that he should attend the assembly to hear and receive the decision of the ecclesiastical persons.² The principles set out

are the same as those in the letter to the German bishops ; but Frederick lays stress upon his special obligations of care and defence to the Roman Church, and he very emphatically repudiates the suspicion that the secular power claimed a right to share in the determination of the question at issue. He does, however, assume a very authoritative tone in summoning Alexander to attend the Council.

It is, however, necessary to observe that in another letter Frederick's position is not exactly the same. In this he begs the Archbishop of Salzburg not to pledge his support to either candidate without consulting him, lest there should arise division in the Empire, and he tells him that he had asked the Kings of France and England only to support that one of the claimants upon whom they should all three agree. He concludes by saying that he will not himself recognise any one as Pope who had not been elected by the unanimous consent of the faithful.¹ Here Frederick's tone is somewhat different: he does, indeed, recognise the common judgment of the Church as being the authority by which the matter should be finally decided, but, at the same time, he speaks as though he and the Kings of France and England were entitled to exercise some authority with regard to the recognition of the rightful claimant.² This may, however, be interpreted as referring only to the period before the judgment of the whole Church had been declared.

Alexander III. did not hesitate to take up the challenge thus addressed to him, but at once firmly repudiated and condemned the action of the Emperor and the contention that an assembly of the Church could take cognisance of the matter. The tone of his statement was courteous, but his attitude was uncompromising.

He recognises that the Emperor was, in virtue of his position, the advocate and the special defender of the Roman Church, and he assures him that he honoured him above all princes ; but he must honour God more, and he is astonished that the Emperor should refuse to the Roman Church that honour which belongs to it. He had learned, he says, from the Emperor's letter, that he had called together a Council of the ecclesiastics of the five kingdoms, but in doing this he had departed from the custom of his predecessors, and exceeded the bounds of his authority, since he had done it without the knowledge of the Roman Pontiff, and had summoned him to his presence as though he possessed authority over him ; while Christ had given to St Peter, and through him to the holy Roman Church, this privilege, that it should consider and determine the causes of all churches, while it should never be subject to the judgment of any one, and this privilege must be maintained even at the risk of death. The canonical tradition and the authority of the holy Fathers, therefore, forbade him to attend the Emperor's court or to receive its judgment, and he would deserve the severest censure if he, by his ignorance or faint-heartedness, were to suffer the Church to be reduced to slavery.¹

When the Council met at Pavia early in 1160, Alexander III. was therefore unrepresented, but the case of Victor was placed before it. EE's representative contended that he had been regularly " *inimatus*," and enthroned and acknowledged by the Roman clergy, while against Alexander he urged especially that he had been a party to an attempt to dismember the Empire, and that the conspirators had agreed with the King of Sicily and the Milanese, that in the event of the death of Hadrian IV. they were to elect one of their number to the Papacy.¹

The decision of the Council has been preserved for us in two forms—in the encyclical issued by the Council itself, and in an encyclical letter of Frederick expressing his assent to its judgment. The encyclical of the Council declares first that the case had been legally and canonically examined by them, "*remoto omni seculari indicio*," and that it had been proved that Victor had been elected by the wiser part (*saniori parte*) of the cardinals in the basilica of St Peter, on the petition of the people, and by the consent and desire of the Roman clergy. They contend that nine cardinals out of twenty had concurred in his election, but they do not deny that they were a minority. They lay great stress on the fact that he had been "*inimatus* " several days before Roland (Alexander III.), they refer for the significance of this to a work which they call '*Liber de Ritu et Ordinatione Romanorum Pontificum*,' and allege that it had been considered important in the dispute about the election of Pope Innocent II. They urge that Roland had been invited to the Council, "*remoto omni seculari*

indicio," but he and his cardinals had refused to recognise any inquiry or judgment on the part of the Church. They give an account also of the conspiracy of Roland and his cardinals. Finally, they declare that the Council had decided that the election of Victor, who had come to the Council, prepared himself to accept the judgment of the Church, should be confirmed and approved, and the election of Roland annulled. They are careful to add that it was only when all this had been done, without any secular interference, that the Emperor as the last, after all the bishops and clergy, on the advice and petition of the Council, received and approved the election of Victor, while after him the princes and an immense multitude of those who were present gave their assent.¹

The encyclical letter of Frederick urges Alexander's refusal to attend the Council at Pavia, but lays much stress upon the evidence of the conspiracy. The Council, he urges, was not a secular court, for it met and considered the matter without the presence of any lay person ; but Alexander refused to submit to the inquiry by the Church, declaring that he had the right to judge all men, but would not be judged by any. The decision of the Council was based upon clear proof of the conspiracy, and on the ground that there was nothing against Victor except that he had been elected by a minority of the cardinals, and it therefore condemned Alexander, and confirmed the election of Victor. Frederick, following the judgment of the Church, gives his approval and proclaims Victor as father and ruler of the universal Church.¹

The letter of the Council lays most stress on the propriety and validity of Victor's election, and that of Frederick on the conspiracy against the Empire ; but they agree in urging that the decision was that of the Church, not of the Temporal power, and that it was to the judgment of the Church that Alexander had refused to submit his case.

The conflict thus began in 1160 continued for seventeen years—that is, until the Peace of Venice in 1177—when

Frederick was compelled to submit to the demands of the Lombard towns and to recognise Alexander III. as the legitimate occupant of the Roman See. It is not necessary for our purpose here to deal with the history of these years—we shall return to the political principles represented in the demands of the Lombard towns in a later volume—we are here concerned with the questions at issue between the Temporal and the Spiritual powers.

CHAPTER II

JOHN OF SALISBURY.

THE ' Policraticus ' of John of Salisbury was written between the years 1155 and 1159, during the Papacy of Hadrian IV.,¹ and belongs, therefore, to the period when there was already some friction between the Pope and the Emperor, but before the great European conflict of Alexander III. and Frederick I., and the important but local dispute between Henry II. and Thomas Becket in England. It has therefore the advantage, as evidence for the trend of thought on the relations of the Temporal and Spiritual powers, that it was written at a time when men's passions were not roused by vehement conflict, but it has also the compensating disadvantage that in some respects it represents abstract and generalised theories whose real significance was not tested by the need of interpretation with reference to particular and practical questions. As we shall see, there are some very interesting points of relation between the theoretical position of John of Salisbury and of Honorius of Augsburg, and it would almost seem as though it was not till after the first great conflict was over that the speculative development of the principles underlying the practical issues of the time began to occupy men's minds.

John represents an advanced ecclesiastical position : he not only condemns severely all aggressions of the Temporal powers upon the Church, and repudiates indignantly the notion that the secular law was supreme over all others, but he very clearly maintains the superiority of the Spiritual power and its law over the Temporal. At the same time he criticises with great frankness the extortions of the ecclesiastical authorities, and condemns the ecclesiastical tyrant as severely as he does the secular. We must consider these positions in their order, for each is important.

In one passage he discusses the appointment of unsuitable persons to ecclesiastical offices,

and represents the defenders of the absolute authority of the prince as maintaining that he was above all laws, and that to question the worthiness of any person whom he might have selected for office was to be guilty of something like sacrilege. They maintained, he says, that no law was equal to the secular, and urged the precedents of custom even against reason, and treated those who ventured to appeal to the divine law as enemies of the prince.¹ John had evidently suffered indignantly under the tone and temper of some of the lawyers of the court, and he fortified himself by frequent citations from the Roman law and its provisions for the protection of the Church and its rights against aggression, and for the exemption of the clergy from the jurisdiction of the secular courts.² His appeal to the Roman law is interesting, as reminding us of the fact that we have arrived at the period when the influence of the revived study of the Roman law was beginning to be important. We have already seen, in discussing his theory of the nature of political authority, that he was much influenced by his extensive acquaintance with the Roman jurisprudence.¹ The civil law was indeed a double-edged weapon in the conflicts between the Temporal and Spiritual powers,² but to John of Salisbury it appeared as a welcome instrument of defence.

John of Salisbury did not, however, content himself with condemning and repelling the aggression of the Temporal power upon the Spiritual, he very emphatically declared the superior dignity and authority of the latter. In one passage he says dogmatically that all the laws of the prince are idle and void if they do not conform to the character of the divine law and the discipline of the Church, and cites the Novels of Justinian as laying down that the Imperial laws must “ imitate ” the sacred canons.³ In another place he sets out a conception which is already familiar to us, and maintains that the prince is subject to God and to those who hold His place on earth, as the human body is ruled by the soul.⁴

He does not, however, only set out these conceptions in general terms, but in one very important passage he expresses them under the terms of an exposition of the doctrine of the two swords, and declares that it was from the Church that the prince received the material sword, for both swords belonged to the Church, but it uses the material sword by the hand of the prince. The prince is therefore the minister (or agent) of the “ sacerdotium,” and discharges that inferior part of the sacred offices which is unworthy to be exercised by the hands of the priest.¹ This conception is parallel to, it may be derived from, some phrases of St Bernard in his treatise ‘De Consideratione,’ and in one of his letters. In the first of these he urged upon Pope Eugenius IH. that both swords, the spiritual and the material, belonged to the Pope and the Church ; the material sword was not, indeed, to be used by him, but was to be drawn at the bidding {ad nutum) of the priest and the command of the Emperor. In the second he declared that both swords belonged to St Peter, the one to be drawn at his bidding, the other by his hand.²

This principle that the two swords belong to the Church is of great significance. There is, as far as we have observed, no exact parallel to these statements of John of Salisbury and St Bernard in the earlier literature of the Middle Ages. The nearest is to be found in that passage of the ‘ Summa Gloria ’ of Honorius of Augsburg which we have discussed in a previous chapter. Honorius maintained that Christ established only the “ sacerdotium ” to govern his Church, and not the “ regnum,” and that until the time of Silvester I. and Constantine it was ruled only by the priests, and that Constantine bestowed upon Silvester the crown of the kingdom, and decreed that no one should receive the Empire without the consent of the Pope. Silvester, however, recognising that those who rebelled could only be controlled by the material sword, joined Constantine to himself as a helper, and bestowed upon him the material sword for the punishment of evildoers.¹ How far the phrases of St Bernard and of John of Salisbury may have been related to those of Honorius it is difficult to say : they do not, like him, relate the principle, that both swords belong to the Church, to the “ Donation of Constantine ” ; St Bernard, indeed, relates it directly to our Lord’s saying to St Peter, bidding him put up his sword into its sheath. We might rather be inclined to think of these words as having some connection with those of Peter Damian when he speaks of St Peter as holding the laws of both kingdoms, which we

have considered earlier.¹ There does not seem, however, any sufficient ground for suggesting any such relation.

What importance are we to attach to these statements of St Bernard and of John of Salisbury ? In the case of St Bernard the contexts suggest that it would be unwise to build upon them the conclusion that they have any definite general significance. In the ' *De Consideratione* ' he is urging upon Pope Eugenius that the disorder and obstinacy of the Roman people would justify him not only in using the spiritual sword, but also in causing the material sword to be used against them at his command and that of the Emperor. In his letter he is urging upon the Pope that he should cause the material sword to be drawn in a crusade for the defence of the Eastern Church. The statement that both swords belong to the Church is no doubt explicit, but it would be very unsafe to argue that St Bernard intended to set forward a definite thesis of the relation of the Temporal power to the Spiritual.

The case is very different with John of Salisbury. The context of his words is the discussion of the difference between the tyrant and the true prince, and the fundamental principle which he sets out is that the prince governs according to law, while the tyrant sets himself above it.² It is in this connection that the passage which we are considering occurs, and in this chapter and the following John discusses the relation of the prince to the law of God and the Church. He begins with the words we have cited, and goes on briefly to describe the humility of Constantine at the Council of Nice, how he refused to preside, and would not sit even among the presbyters, and received its decisions as proceeding from the Divine Majesty. He exhorted indeed the members of the Council to charity and peace, but declared that it was unlawful for him as a man who was subject to the judgment of the priests to examine the causes of those who could be judged by God alone. John also cites the excommunication of Theodosius, and speaks of him as having been suspended by St Ambrose from the use of the " *regalia*," and the " *insignia* " of empire ;

and, he concludes, that he who blesses is greater than he who is blessed, and that he who has the authority to confer an office is greater than he upon whom it is conferred, and that he who can lawfully confer an office can also lawfully take it away. Did not Samuel, he says, on account of Saul's disobedience depose him and place the son of Jesse on the throne ?¹

In a passage in the writings of Hugh of St Victor, we find a parallel to these phrases of John of Salisbury. Hugh of St Victor speaks of the Spiritual power as instituting the Temporal power and as judging it.²

It would seem to be correct to say that in the work of John of Salisbury, and in that of Honorius of Augsburg, we have the first definite statement of the conception that ultimately all authority, secular as well as ecclesiastical, belongs to the Spiritual power, while the phrases of St Bernard and of Hugh of St Victor would seem, as far as they go, to be related to the same conception. It may reasonably be contended that this represents a theoretical development of the actual position taken up by Gregory VII. in his conflict with Henry IV. How far there may be any relation between this development and the letter of Hadrian IV. to the Emperor Frederick Barbarossa, which, as we have seen, caused so great a commotion, it is impossible to say. It is, however, clear that if Hadrian's words had been intended to express any such principle, it was not only at once and violently repudiated in Germany, but was expressly disclaimed by Hadrian IV.

There is, however, another aspect of John of Salisbury's attitude to the contemporary problems which deserves attention. If he condemns with severity the abuses, and what he considers to be the unjustifiable pretensions of the secular authorities, he is hardly less frank in his criticisms of the abuses of the ecclesiastical order. He has thrown the main aspects of these into the form of a conversation between himself and Pope Hadrian IV., which he says took place at Benevento. In the course of the conversation Hadrian asked him what men were thinking about the Pope and the Roman Church. John replied that many men complained that the Roman See, which was the mother of all churches, behaved like a stepmother rather than a mother. The Roman clergy, like the scribes and Pharisees, laid heavy burdens on men's shoulders, which they did not touch with their own fingers. They were greedy and avaricious,

they sold justice instead of administering it freely; the Pope himself had become intolerably burdensome—while the churches and altars were falling into ruin he built himself palaces, and was clothed in purple and gold ; the judgment of God could not fail to overtake the rulers of the Church.

When Hadrian asked him to say what he thought himself, he replied that he was in a strait between the danger of adulation and of treasonable licence ; but he sheltered himself behind a statement of Cardinal Guido Dens, made in the presence of Pope Eugenius, that there was in the Roman Church a leaven of avarice, which was the root of all evils. John was careful to say that among the Roman clergy there were men of the highest integrity, but he emphatically expresses the opinion that the complaints of men were not unjust. He besought the Pope to place in the offices of the Roman Church men who were humble and despised vainglory and money, and he asked why the Pope should himself demand gifts and payments from those who were his sons ; he suggested that he did this in order to be able to secure the fidelity of the Roman people, but this he urged was no justification, for justice was not a thing that should be sold for a price.¹

Pope Hadrian laughed, and complimented him on the freedom with which he had spoken, begged him always to tell him of any complaints of which he might hear, and replied to his statement by relating Menenius Agrippa's story of the stomach and the other parts of the body, and John professed himself as satisfied.¹ It is noticeable that he returns to the last subject in a later book, and attributes the difficulties of the Boman See to the necessity of satisfying the greed of the Boman people.²

In other places he denounces with great severity the exactions of the bishops and archdeacons and the other officials, and not less those of the papal legates, whose conduct he describes as being such that it might be thought that Satan had gone out from the face of the Lord to scourge the Church.¹ It is even more significant that in another passage he bids the priests not to be indignant, if he says that there were tyrants also among them. Ironically, it would seem, he says that he is not referring to the legates of the Roman Church, for it could not be judged by men, and it was incredible that the legates should do what was forbidden by the Roman law to the governors of provinces and the proconsuls. Who could believe that the Fathers of the Church, the judges and lights of the world, loved gifts, while they preached poverty, and acted in such a manner that they were a terror to all men, and were beloved by none.² If the secular tyrant was under the divine and human law rightly destroyed, who could think that the tyrant in the priesthood was to be loved and revered i¹

CHAPTER III.

GERHOH OF REICHERSBERG.

THE most important writer, whose work serves to illustrate the contemporary judgment upon the questions raised by the renewed conflict between the Temporal and Spiritual powers, is Gerhoh of Reichersberg.

He was born in 1093 or 1094, and became Provost of the Collegiate Church of Reichersberg in 1132, and was one of the most eminent literary representatives of the reforming party among the German clergy, being especially concerned during the whole of his life with the question of the strict observance of their Rule by the canons of the cathedral and collegiate churches. He was a determined supporter of the papal cause during the last stages of the " investiture " controversy, and took an active part in all the Church affairs of the period which followed this down to the time of his death in 1169.

His literary work, so far as we are here concerned with it, falls into two groups. The earlier, that is the treatises written mainly before the outbreak of the conflict between Frederick Barbarossa and Alexander III., are interesting especially as illustrating the attitude of German Churchmen of his type to the Settlement of Worms, and its effect upon the position of the German bishops, and also his grave concern with regard to the secularising effect of the feudal jurisdictions and feudal obligations of the bishops as holding the " regalia." The later group of treatises were written after the beginning of the conflict, and are mainly concerned with

questions arising out of this.

These writings are peculiarly important as illustrating the judgment of a man who, though he was a strict and severe reformer, was no mere partisan, but rather endeavoured to hold what he was convinced was a fair and just balance between the conflicting claims of the Temporal and Spiritual powers—a man who was a determined upholder of the freedom of the Church, but also condemned unsparingly all invasion by the Church of what he conceived to be the rights and independence of the Empire. It is indeed very noticeable that even in his last work, 'De Quarta Vigilia Noctis,' written when he was a fugitive from Reichersberg, on account of his fidelity to the cause of Alexander III., he still gravely and seriously insists upon the principle that each power should recognise and respect the rights of the other.¹

It is in relation to the first aspect of the principles of Gerhoh that we may most conveniently notice the position of Arnold of Brescia. It is not within the scope of this work to deal with the whole significance of his principles and actions, for they have relation to many aspects of mediaeval society. We must content ourselves with the observation of what we may reasonably judge to have been his views upon the question of the tenure by the Church of secular property and power. And, even with regard to this, we have to be very cautious, for of writings by himself, if indeed there were such, nothing has survived, and the reports of his opinions proceed from quarters in the main hostile, and are by no means always consistent with each other.²

The writers of the time give brief accounts of his opinions. Otto of Freising says that he was a violent critic of the bishops, an enemy of the monks, a flatterer only of the laity ; and that he maintained that clergy holding property, bishops the "regalia," and monks possessions, could not be saved : that all these things belonged to the prince, and should by him be granted only to the laity.¹ The 'Historia Pontificalis' is not so precise in its indications, but represents him as teaching that the Church of the cardinals was not the Church of God, and that he repudiated the Pope, because the cardinals and the Pope were proud, vicious, and violent men.²

The author of the 'Gesta di Federico' says that Arnold accused almost all the clergy of the time of being guilty of simony, and taught that the people should neither confess to them nor receive the sacraments from them, and attacked the Papacy for its avarice and the corruption of its courts.³ The

author of the poem called "Ligurinus" reports that Arnold maintained that the clergy should receive the first-fruits and the freewill offerings of the people, and the tithes, but condemned the tenure of estates by the monks, and of the "fiscalia iura" by the pontiffs, and taught that all existing property was subject to the prince, and should be granted to the laity.¹

We may gather from all this that Arnold attacked the secularisation of the clergy through their tenure of secular forms of property, and desired that the secular authority should reclaim these. His position so far would seem to be much the same as that of Paschal II. and Gerhoh. He went, however, further, and maintained apparently that so far as the Church was thus secularised it was not the Church at all, and that the faithful should withdraw themselves from its communion ; his position was not unlike that of some of the severer reformers in the eleventh century, but went beyond the authority of the Church.

It is for this that he is censured by Gerhoh, and Gerhoh approves of the condemnation of his doctrine, while he was gravely concerned that the Roman Church had involved itself in responsibility for his death ; he is evidently sceptical with regard to its attempt to evade this.²

The relation of Arnold to the attempt of the people of the city of Rome to establish a government independent of the Popes we shall have to consider in the next volume in connection with the development of civic and municipal liberties ; while the claim of the citizens of Rome to control the election of the Emperor has little significance in the history of mediaeval political theory. It is worth while to notice, however, that in a letter by a certain Wezel to Frederick Barbarossa, in which these claims are set out, the "Donation of Constantine" is contemptuously referred to as an obvious fabrication,¹ just as Otto III. in 1001 had spoken of it.²

Gerhoh's earlier treatises are important, as we have just said, first as illustrating his attitude to the Settlement of Worms and its effect upon the Church, but they are also very interesting in their relation to the question raised by Paschal H.'s proposal to surrender the "regalia" if the emperor would surrender his claim to "investiture." In the first treatise with which we are concerned, written between 1126 and 1132, he expresses his grave concern with the conditions under which the "regalia" were granted and held. He is seriously disturbed that bishops, abbots, and abbesses after their election should have to go to the royal court to receive the "regalia" and to do homage or fealty for them.¹ He repeats the same complaint in another treatise, written in the year 1142-43. He admits, indeed, that there was a papal command that the bishops should do "iustitia" to the king, but he maintains that this did not mean that they were to do homage and swear fidelity.² The importance of the matter is not really confined to the question of doing homage, it is clear that what concerns Gerhoh most is the nature of the obligations in which the tenure of the "regalia" involved the bishops, and especially the rendering of feudal military service, and he contends vehemently in the treatise first cited that it is wholly unlawful for the bishops to use the revenues of the Church in maintaining soldiers.¹ This leads him to a discussion of the nature of the property of the Church, and of the purposes which it was to serve: one part was to maintain the clergy, the second to build and repair the churches, the third to support widows and others who were in need, and the fourth was to go to the bishop to be spent upon the needs of himself and his household, and on the strangers and wayfarers to whom his doors should always be open.² He distinguishes three forms of Church property—tithes, estates, and "regales aut publicas functiones." He is clear that the first and second cannot be taken from the Church without sacrilege and injustice, but as to the third he says that the Church is not greatly concerned to defend their possession, it would indeed be better that the Church should lack them, rather than that it should be involved in secular affairs.¹

Here is a significant conception which may perhaps help to throw some light on the motives which may have lain behind Paschal II.'s proposal to surrender the "regalia." Gerhoh evidently made a very sharp distinction between those forms of property which were rightly and inalienably possessed by the Church, and those which were at best of doubtful advantage, might involve the Church in affairs alien to its proper functions, and with which it might dispense. He does not indeed dogmatically maintain that they should be given up, but he goes very near to this. These duchies, countships, &c., belong to the world, while tithes and other freewill offerings belong to God; and while he does not wish to offend those who maintained that it would be sacrilege to take them away from the Church when they have once been given to it, he affirms that these royal and military functions cannot be administered by the bishops without a certain apostasy from their order.²

The temper which is illustrated in this treatise is interesting and important, for it shows that there was in the minds of some at least a feeling that it might have been better for the Church had the proposal of Paschal II. taken effect. Gerhoh continued for many years to be gravely occupied with the matter, though it would appear that his judgment fluctuated to some extent from time to time.

The treatise written in 1142-43, which we have already cited, is in a large measure occupied with the same subject. He begins by remarking that he had been attacked as an enemy both of bishops and of kings, because he had maintained that men should render to God what was God's, and to Caesar what was Caesar's, for neither were content to remain within their own limits; but kings usurped the rights of bishops, and the bishops the "regalia," which belonged to the king.¹ He denounces with great energy those bishops who conducted campaigns and spent the substance of the Church on military operations; and he contends that the Church is reduced to serve the world when the bishops do homage and take the oath of fealty to the king.² It would seem, however, that he was not at this time prepared to maintain that the "regalia" should be surrendered, but that they should be wisely administered by the bishops.¹ He gives an account of the negotiations between Paschal II. and Henry V., and reports that Paschal had been induced to offer to surrender the "regalia,"

but he mentions this without signifying any approval, and also reports what he understands to have been a retractation of the offer.²

He also in this treatise makes an important statement with regard to the provisions of the settlement of Worms, and the actual conditions of his own time. He relates that the provisions of the settlement that the German bishops were to be elected in the presence of the king, and to receive the “regalia” “per sceptrum” had been heard at the Council of the Lateran with doubt and indignation, and he expresses his joy that the first provision had fallen into disuse, and his hope that the evil custom of homage and oath might be abolished.³ The treatise concludes with that repudiation of the interpretation of the Worms agreement, as imposing homage and the oath of fealty on the bishops, which we have already cited.⁴

In another treatise, entitled ‘De Nobilitatibus huius Temporis,’ written in 1155-56, he appears as having moved still further from his original judgment. It had been disputed, he says, whether the “regalia” might be taken away from the Church, and he seems to contend that this should not be done. He admits that this tenure implied obligations which the bishop must discharge, and that it was therefore legitimate that the bishop should take the oath of fidelity to the king, “salvo sui ordinis officio,” and that if the bishop violated this oath he might lawfully be deprived both of his spiritual and temporal dignity by his spiritual judge, and by the authority from whom he held the “regalia.”¹ From another passage in the same treatise it is clear that he at this time admitted that among these obligations was included the military service of the knights, to whom the bishops had enfeoffed the lands which they held as “regalia.” He only desires that they should not create new fiefs, and especially that they should not make such a use of tithes and freewill offerings.¹

The change in Gerhoh’s attitude, as represented in these two treatises, is clear, but from an examination of his next important treatise it becomes evident that his mind was still greatly troubled about the whole matter. In the treatise ‘De Investigatione Antichristi,’ written in 1161-62, he gives another detailed account of the negotiations between Henry V. and Paschal II. for the surrender of the “regalia” if the emperor would surrender the “investiture.”² He seems to represent the suggestion as coming from Henry V., but as being made in bad faith, for he knew that the German and Gallican bishops would not consent to it.³ Paschal accepted the proposal, but it was at once indignantly repudiated by the bishops. It is very noteworthy that Gerhoh, in giving an account of what followed, represents Henry’s object in seizing Paschal as being to extort either the recognition of the imperial right to “investiture,” or the cession of the “regalia,” and he represents Paschal as having conceded the latter point.¹ He represents Henry V. as continuing, after Paschal II’s death, to maintain the same position—namely, that either the Church should surrender the “regalia,” or the emperor should retain the right of appointing the bishops.²

Gerhoh puts together an interesting summary of the arguments which were used or, as he says, might have been used on either side. The ecclesiastical party argued that it was right and proper that the Church should enjoy the wealth and dignity conferred by the “regalia”; the imperial party recognised that tithes and freewill offerings rightly belonged to the Church, and involved no obligation of service to the emperor, but contended that the case of the “regalia” was quite different. If the Church was to hold these, the bishops must render to the emperor homage and service, and if it was not lawful for the clergy to take part in secular and military matters, the remedy was obvious—namely, that they should surrender the “regalia” which involved them in such obligations. If the bishops said that they could render these services to the emperor, and also carry out their spiritual duties, the imperialists contended that it was then right that the emperor should have the first place in their appointment, for it was not reasonable that any one should be made a prince of the kingdom except by the emperor with the advice of the other princes.³ The emperor then was determined not to grant the Church the right of free election, and the bishops were equally determined not to surrender the “regalia,” but were ready to discharge their customary services to the emperor.¹

Gerhoh says that it was not for him to judge the actions of the bishops, and to determine

how far the homage and oath of fidelity to the king involved them in those secular cares which St Paul condemns ; they may indeed, he says, even though they are thus hampered, find some leisure for prayer and study, and thus in spite of their obligations may be almost free. God will judge how far the possession of the “ regalia ” helps or hinders the Church. May He at last give his Church that liberty which beseems it.¹

A little further on in the same treatise Gerhoh comes back again to the subject under somewhat different terms. The possession of the “ regalia,” he evidently felt, involved a grave danger of confusion between the functions of the Temporal and Spiritual powers, and he emphatically asserts the distinction between them, under the terms of the two swords. The Lord himself in the Gospel had distinguished the two powers ; when in answer to his disciples, who said, “ Behold there are here two swords,” he replied, “It is enough.” But now, Gerhoh says, we have a third power which is compounded of both; and he finds a telling illustration of this in the fact that at times not only the Cross, which was the emblem of the episcopal office and of Christian humility, was borne before the bishop, but also the standard of a duke, which the king had conferred upon him as the symbol of authority to punish criminals. This seems to Gerhoh monstrous and irrational ; the Jewish priesthood was indeed permitted to use the temporal sword, but Christian priests are not allowed to do this.² H, he says, it was urged that the pious liberality of kings had endowed the bishops with the revenues of duchies or other similar offices, and had given them the authority of the administration of justice which belonged to these, and that it was therefore right that the symbols of this authority should be carried before the bishops, he would reply that, while he praised the kings for their liberality, it would have been in his judgment better that they should have kept for themselves the authority of administering justice, while they bestowed upon the bishops the revenues.¹ He contrasts what he conceived to be the wise arrangement in Rome with the deplorable custom in the kingdoms of the “ Franks.” In Rome, he says, the prefect of the city received from the Pope his authority for dealing with civil cases, but his criminal jurisdiction from the emperor, while in these kingdoms the bishops appointed their representatives (vicarias potestates), who administered both civil and criminal jurisdiction, and thus made themselves responsible for the shedding of blood, a thing unlawful for the clergy.¹ There were some, he continues, who argued that this was after all the same thing as was done when the priests appointed kings, but he repudiates this conception with great energy, and in terms which are very significant. Bishops, he says, do not create or appoint kings, but only bestow upon them their blessing, and place the crown upon the heads of those who have been created by the election of the princes and the peoples, or succeed by hereditary right. Kings are not created by the priestly benediction, but, according to the divine ordinance, are created by human election and acclamation.²

Gerhoh indeed repudiates what he represents as the doctrine of Arnold of Brescia, that a Church which had thus involved itself in secular matters had ceased to be the Church of God, though he was evidently gravely concerned about the share of the Roman Church in the execution of Arnold which he strongly condemns. He concludes the discussion of the subject by saying that he does not condemn the possession of the “ regalia ” by the prelates of the Church, if they used them lawfully and modestly; but when the clergy or bishops abandon their proper work, and immerse themselves in secular affairs, when they use the temporal sword to avenge themselves upon those whom they consider to be their enemies, when they use the tithes and oblations of the faithful to arm themselves with chariots and horses, it is as though they set up the abomination of desolation in the sacred place, for such actions belong not to the likeness of Christ, but to that of antichrist.¹

We have dealt with the question of Gerhoh’s attitude to the tenure of the “ regalia ” by the bishops at some length, for it throws a good deal of light on the significance of Paschal’s proposal to surrender them. It is clear that there were at least some among the eminent members of the reforming party who felt that the tenure of these political authorities did involve the Church in great difficulties, did tend to secularise it, and to divert the bishops and

clergy from their proper functions. Gerhoh was evidently greatly troubled and perplexed : in his earlier days he had evidently been inclined to think that the “ regalia ” might with advantage be surrendered, in his later writings he seems to think on the whole that they should be retained ; but he felt acutely the dangers which resulted from them—the danger of the secularisation of the Church, and, as we have just seen, the danger of a confusion between the functions proper respectively to the Spiritual and the Temporal powers. He had been a convinced and zealous defender of the papal position in the “ investiture ” controversy, of the principle of the independence of the Spiritual power, but he was clear about the intrinsic distinction between the two powers : we have seen how sharply he distinguishes between the “ Two Swords.”

We have thus arrived at a point where we find a natural transition to the second important aspect of Gerhoh’s position, that which is concerned with the relation of the Temporal and Spiritual powers. His conceptions on this matter were developed mainly with reference to the violent conflict between Frederick Barbarossa and the Papacy which began with the election of Pope Alexander III. Before entering upon this we must, however, briefly notice some observations of Gerhoh in an earlier treatise. In his commentary on Psalm lxxiv., which is attributed to the year 1151, he affirms that the Popes had both excommunicated and deposed certain kings or princes on account of their incapacity or wickedness, and had created others in their place, that they might with the sword attack those who were enemies of the Church and kingdom ; but he warns the officers of the Church that they must be careful lest they should make themselves responsible for the death of their enemies.¹ He denounces those bishops who confounded in their own persons the dignities of the episcopal office and of the count, and made wars, and caused the slaughter even of innocent persons, and he expresses his earnest longing that spiritual matters should be dealt with by spiritual persons, and secular by secular, and that the proper limits of each authority should be maintained.² Gerhoh clearly does not

intend to condemn the excommunication and deposition of kings or princes who were enemies of the Church ; a little further on he clearly states that in his judgment this was justifiable and right.¹ He even suggests a principle which found a very important development in the claim of Innocent III. to intervene in the international relations of various countries, with which we shall deal in the next volume. He suggests that both in the internal disputes of any one country, and in quarrels between different countries, it is right that the Church should declare which was the just cause, and should support the defenders of this with its ministrations ; and he mentions with approbation the fact that when recently the King of Hungary had meditated making war upon the Greeks, he had first held a council with his bishops, and when they declared that it was Hungary which had broken the treaty of peace, he desisted from his purpose. He urges that if the bishops of the Church were to decide upon the justice or injustice of the disputes which produced wars, and especially if their judgment was confirmed by the Pope, no king would be able to resist, for the Pope is set over the kingdoms, and has power to set up and to put down.²

It seems to be clear that at that time Gerhoh was prepared to accept the general principles of what we may call the Hildebrandine position with regard to the authority of the Popes in deposing impious and excommunicated rulers : he does not indeed directly mention Hildebrand or Henry IV.,

but the reference to them seems fairly evident, and certainly the assertion of the principle of the papal authority to act in such cases is clear. We must, however, be careful to notice that Gerhoh does not conceive of this as contrary to his principle of the distinction between the functions of the two powers. A little further on in the same work he again insists that the clergy must keep themselves clear of all criminal judgments, and must confine themselves to their office of teaching the secular authorities what is right and just, and he sums up his position by quoting, as from the letter of Pope Nicholas I. to the Emperor Michael, the words of Pope Gelasius, in which Christ is said to have separated the two powers and given to each its own function.¹ In order, however, to arrive at a more complete judgment of Gerhoh’s position we

must turn to the treatises written after the outbreak of the new conflict.

The treatise 'De Investigatione Antichristi!', from which we have already made many citations, was, as we said, written in 1161-62, about two years after the disputed Papal election, and Gerhoh suggests that this calamity was in part a judgment of God upon the Church. In other schisms, he says, it was easy to decide which was the Catholic Church, but in this case it was not easy for any but those who were prudent and sincere lovers of the truth to come to a decision.¹ He gives a detailed account of the actual election, and concludes that it was so far clear that the case of Alexander was the better one,² but he then goes on to relate how the adversaries of Alexander raised against him that charge which we have already mentioned—namely, that Alexander and the Cardinals of his party had during the lifetime of Hadrian IV. entered into a conspiracy with the King of Sicily and the Milanese against the emperor, and had bound themselves by an oath that they would not elect any one to the Papacy who was not a member of the conspiracy, and that they had been bribed by the Sicilians and Milanese to promise that they would excommunicate Frederick, and would not absolve him without their counsel.³ They also, he relates, urged the difference between the conduct of Victor and that of Alexander, the former appearing at Pavia and submitting his claim to the Council, while Alexander haughtily refused to do this.⁴

Gerhoh was, it would seem, much moved by these considerations, and as it appeared to him the judgment of the Church was so much divided that he found it difficult to arrive at any conclusion. The supporters of Alexander urged that the apostolic sees of Antioch and Jerusalem acknowledged him, but the supporters of Victor urged that the judgment of other Churches must also be considered, especially as these Oriental sees were but little informed.⁵ Gerhoh was evidently much perplexed with regard to the action of Alexander in refusing to vindicate his position to the Council at Pavia. The Lord himself, he urges, had condescended to show himself to his disciples when they doubted his resurrection, and St Peter submitted to be rebuked by St Paul.⁶ He had been inclining to decide for Victor when he had received news of a Council held at Toulouse attended by one hundred bishops, the Kings of France, England, and Spain, and the envoys of Victor, Alexander, and the Emperor, and that the Council had decided for Alexander and had excommunicated Victor.¹ He was not, however, convinced, for the Council had apparently not considered the charge of conspiracy, and he felt that this was the most serious question, and that the truth or falsehood of the charge could only be determined by a General Council.²

Gerhoh's mind was mainly occupied with the two questions, whether the charge of conspiracy was true, and whether it was right that Alexander III. should refuse to submit the charges against him to a General Council. He is unsparing in his condemnation of the conspiracy against the emperor, if the charge were true,³ and he does not see his way out of the difficulty except by the judgment of a General Council.⁴ He examines at some length the question whether and under what term the Pope might clear himself of the charge brought against him. He points out that St Paul conferred with the Apostles at Jerusalem lest he should cause scandal by differing in any respect from their doctrine ; and he relates how Pope Marcellus, who had sacrificed to idols, while the Fathers recognised that he could not be judged by any one, yet because he could not clear himself before the Church, passed against himself the sentence of deposition and excommunication ; and how Pope Leo III., publicly and in the presence of Charlemagne and the people, cleared himself of the charges made against him.¹ Gerhoh, indeed, accepts the principle that no one could judge the Pope ; ² he does not, however, admit that this principle applied to the circumstances of a disputed election : in that case he thinks that the claimants should present themselves to the brethren and set out their claims so that the Church of God might resist the evil and accept the good.¹ He reaffirms his horror at the conspiracy which, on the evidence of Victor and of two of the cardinals who supported him, and had themselves been parties to it, had been formed against the emperor, and demands that those who were accused should clear themselves of it, and break off their alliance with the enemies of the Empire, especially as the emperor was prepared to do justice

with regard to all matters of which they complained.² Gerhoh concludes the chapter, as he had begun it, by urging that the only remedy for these troubles would be the summoning of a General Council, which might decide between the claimants, and might restore peace between the “ sacerdotium ” and the “ imperium.”¹

It is very noteworthy that Gerhoh was so deeply stirred by the whole situation that he continues his treatise with a violent denunciation of the whole policy of the papal Court {Romani}. He accuses them above all of pride and covetousness, and contemptuously suggests that they may ultimately abolish all separate bishoprics, and bring all parts of the Church under the immediate government of Rome ; that they will interfere in the political relations of rulers and subjects, and excommunicate those who do not obey them, and that they will do all this for money.² He attributes the existing conflict and schism to the avarice of the Romans, who had been corrupted by the gold of the Sicilian King and the Milanese, and he ascribes the continued resistance of Milan to the imperial authority to the support of the Romans.¹ He was indeed conscious that he might be censured for allowing his zeal to carry him too far, but contended that he was not directing his arguments against any one personally, but was only anxious to point out the dangerous consequences which might flow from these evils, for there was a real danger, if these scandals were neglected, of such a departure from the obedience of the Roman Church as had been made by the Greeks.²

Once again he restates the arguments for and against the legitimacy of Alexander's election, and says that actually the Church was divided into three parts, one accepting Alexander, the other Victor, while a third neither accepted nor rejected either, but hoped for such a more complete and adequate consideration of the circumstances as could only be obtained in a General Council summoned with the consent of the kings. He felt himself unable to come to any decision, but inclined to the third party.¹

The treatise concludes with a very emphatic condemnation of the tendency, which he attributes to the Papal party, to claim a political authority over the emperor. When they represented in pictures and letters that the emperor owed homage to the Pope—referring no doubt to the angry correspondence of Hadrian IV. and Frederick Barbarossa, with which we have already dealt,²—when they interposed between the emperor and those who had rebelled against him, they made the Pope lord over the Emperors, and reduced the emperor to the position of a vassal. This was really to destroy the power which had been created by God, to resist God's ordinance, and to confound the nature of the two swords. Each power must be content with its own place and function.³ The emperor or king must not assume to himself that which belongs to the priest, and the bishops must render to Caesar that which is Caesar's, and if they wish to hold the “ regalia ” they must render to the king a just and suitable honour. Once again he urges that it is not proper that the bishop should do homage : the king should be satisfied that the bishop should swear fidelity, and that he would defend the crown, “ saving his office.”¹

The treatise throws a great deal of light upon the state of opinion in Germany, both with regard to the actual controversy of the moment about the election to the Papacy, and also with respect to the state of mind of religious men about the relations of the two powers. For it is noticeable that it is the very depth of his religious feeling which makes Gerhoh alarmed lest the Church should be involved in secular matters. He represented the tradition of the necessity of freedom for the Church, he had no doubt about the justice and the necessity of the struggle against lay “investiture,” but, as he felt it, the problem of the day was not so much how the Church was to be protected against the aggression of the secular power, but rather how it should free itself from the entanglement in secular matters in which its own success had tended to involve it.

All this is again brought out very clearly in some of his later works. It was in 1166-67 that he addressed a little treatise to the Cardinals of the Roman Church. The conditions had indeed greatly changed since he wrote the ‘ De Investigatione Antichristi.’ The Antipope Victor had

died, and Paschal had been elected to succeed him. His election was described in an encyclical letter of the German princes of May 1165, as having been made by the bishops and Cardinals of the Roman Church, in the presence of the bishops of Lombardy and Tuscany, the Prefect and many nobles of Rome, and as having been recognised by the Church and princes of the Empire.¹ Gerhoh, however, was clear and emphatic in his repudiation of him, alleging that no Cardinal-Bishop had taken part in his consecration, and he now definitely recognised Alexander III. as the legitimate Pope,² but he also urged the great difficulty which was caused to his supporters by the fact that the charge of conspiracy with the King of Sicily and the Milanese had not been disproved, and by the assumption on the part of some of the supporters of Alexander that the action of Hadrian

TV. could not be condemned.¹ He argued that Alexander and his supporters should recognise that while it was true that the Pope and his actions were not subject to any human judgment, this applied only to his spiritual character and office, but not to his relations to secular matters : with regard to these his actions were open to amendment,² and he brought forward a number of illustrations to show that the Popes themselves had recognised this, and had cleared themselves of charges related to such matters ; he included the purgation of Leo IV.³ If, therefore, it was complained that the Pope and Cardinals had committed some action which troubled the kingdom and divided the Church, this should either be denied or proved to have been just.⁴ If it should prove that the Pope had really done wrong, this could be changed and amended—there were numerous examples of this having been done—and he cites a number of instances, including St Peter, Boniface II., Paschal II., and Calixtus II.¹ He suggests that it was possible that the alleged agreement with the King of Sicily, about which there had been so much trouble, had been made by Pope Hadrian IV. under constraint, and he begs the Cardinals publicly to prove that it had never been made, or to justify it, or to amend it.²

Gerhoh warned the Pope and the Cardinals that their continued silence might cause the quarrel to grow to such a point that the “regnum” and “sacerdotium” would destroy each other, and he reminds them of the words of Gelasius (he quotes them as from the letter of Pope Nicholas I. to the Emperor Michael), in which it was laid down that it was Christ himself who

had allotted their distinctive functions to the Temporal and Spiritual powers. If this principle, he says, had been remembered, the present conflict would not have arisen between the two powers, which must both continue until Christ himself should come to His final victory.¹ He therefore besought the Cardinals, if indeed they desired to unite the divided members of the Church, to make it known that they did not, as was alleged, desire to destroy the kingdom.²

In another passage he urged that the temporal rulers, if they should desire to rule unjustly, should be instructed but not destroyed ; and he reported that in frequent conversations the emperor had made it plain to him that he did not desire to go beyond his just rights, that he desired to support the Pope if he were willing to admit these, but that he was determined with all his power to resist any one who attempted to interfere with them, being confident that no one could be a true successor of Peter who attempted in the name of the Papacy to be lord not only of the clergy, but also of the kingdom.¹ Gerhoh, as he says, had hoped that these troubles might have been settled by a General Council or by private negotiations, and the Emperor had been advised by his counsellors to agree to this, but the counsellors of the Pope had advised him against these proposals. He therefore suggests that the best course would be that the Pope should deal with the charges which had been brought against him in a letter addressed to the principal men of the Church and kingdom.²

The last work of Gerhoh, ‘De Quarta Vigilia Noctis,’ was written in 1167, two years before his death. He had, for his fidelity to Alexander III., been driven from Reichersberg, and the work is a very interesting and even moving expression of the temper of a man who, while true to his conviction of the injustice and iniquity of the interference of the emperor in the affairs of the Church, was yet also a sincere and candid critic of the faults of the Church, and of what seemed to him to be the dangerous tendencies of the Papal party, of a man who

was devoted in his obedience to Rome, but also a loyal subject of the Empire. In his old age, as he says, he found himself driven from his "nest," and exposed to the enemies who thirsted for his destruction and devastated his habitation, and all this because he was faithful to the Pope, and would not recognise the pretenders, Victor and Paschal.¹ And yet he retained that sincere and impartial judgment which is reflected in his whole work, and maintains that the lamentable characteristic of this fourth and last watch of the night was not so much the distress of the Church and the aggression of the Temporal power as the growth of avarice in the Church.²

He is indeed very direct and unsparing in his censure of the Church for this great fault. He defends firmly the lawful position of the Pope and Cardinals, but he charges the Church with extortion and corruption. Payment was demanded for its judgments, even when they were just, and sometimes they were unjust and obtained by bribes.¹ He laments over the fact that since the outbreak of the conflict between Gregory VII. and Henry IV. the Popes had been compelled to obtain the support of the Roman people by the payment of large sums of money, and had been forced to raise these in every quarter in order to satisfy the avarice of the Romans.² He censures also very gravely the arrogance and greed of some of the Cardinals.¹

He had no hesitation in maintaining the propriety of the action of the Pope in urging the Catholics to fight against the schismatics,² and he relates how the judgment of God had recently fallen upon the emperor and his army, when they had come to Rome with the schismatic antipope Paschal, and many of them had been struck down and slain with the pestilence.³ On the other hand, he very solemnly warns the Pope against claiming a secular authority to which he had no right. He bids the Pope beware lest he should pretend to have the right to grant temporal dignities as though they were fiefs, and while he admits that the Donation of Constantine might seem to have granted to him the right to administer secular affairs in the city of Rome, he urges that the emperors had ruled both in Rome and in the world.⁴

He censures with great severity the desire to compel the emperor to render to the Pope such signs of honour as might be dishonourable to himself. He admits that Constantine had in his humility once acted as "strator" to Pope Silvester, but Silvester had never called him his "marshal," nor represented him as such in a picture; and no emperor since had been called by such a name. On the contrary, the Roman Pontiffs and emperors had mutually honoured and aided each other, and he expresses his astonishment that the Romans should now venture to set up such a picture, and he bids them hearken to St Peter, who said, "Fear God; honour the king." ¹

Gerhoh, it is evident, had not forgotten the scandal which had arisen over the phrases and circumstances of Hadrian IV.'s

letter to Frederick,¹ and was determined to make it clear that he and the loyal subjects of the Roman See in Germany were not prepared to tolerate any attempt on the part of the Pope to claim a secular authority which did not belong to him. On the other hand, he warned the emperor not to claim a power which was not his, and to pretend to a right to make and unmake bishops, which was wholly alien to him.²

He sums up the principles of the immediate source of the authority, both of the Temporal and the Spiritual powers, in a short but pregnant passage. As Adam, he says, was formed by God from the dust of the earth, and then God breathed into him the spirit of life, and thus set him over all living creatures, so the emperor or king was to be created by the people or the army; and, when the princes or the best of them had recognised his rule, he was to receive as it were the spirit of life by the priestly benediction. Thus also the Pope or bishop was first, by the election of the clergy and by consecration "in spiritu promovendus," and then "tamquam formandus in corpore" was, with the assent of the chief men, to be honoured by the emperor or king, and to hold the "regalia" by his "conniventia." ³

There are phrases in the passage which may suggest some ambiguities, but its general tenor makes it clear that, while Gerhoh recognised an important place as belonging to the Pope or clergy in the "benediction" of the temporal ruler, and a place of importance as belonging to the secular

authority with relation to the bishop's tenure of the "regalia," he yet firmly maintained, that it was neither the emperor nor the king who made the Pope or bishop, nor the bishop or Pope who made the emperor or king, but that in each case their authority was drawn from those who had the right of electing them.

If only each would be content with his own power, and cease to claim that which belonged to the other, there might even in the fourth watch of the night be a true peace ; and Gerhoh quotes some verses of a poem written, as some think, in 1091

"Querit apostolicus regem depellere regno ; Rex furit e contra papatum tollere papae.

Si foret in medio, qui litem rumpere posset Sic, ut rex regnum, papatum papa teneat, Inter utrumque malum fieri discretio magna."

But who, he exclaims, can end this dispute unless the Lord Jesus comes into the ship of Peter and subdues the tempest of avarice, of avarice which is the last Antichrist ? ¹

He concludes the treatise with the prayer that the Lord would come to his Church, which in this fourth watch was in the greatest danger, and "would subdue those false priests who were trading and plundering in his house, and those princes who were playing the tyrant under the pretence of religion—that the Lord would come and save the world and the Church by making peace between the "regnum " and the "sacerdotium." ²

CHAPTER IV.

CONCLUSION.

WE have endeavoured in this volume to set out the development of the theory of the relation of the Temporal and Spiritual powers from the beginning of the tenth century till the latter part of the twelfth. We have brought this study to a close before the accession of Innocent III., because we think that his actions and principles will be better discussed in immediate relation to the circumstances and theories of the thirteenth century, with which we hope to deal in the next volume. We have endeavoured to set out both the actions and theories as objectively as possible, to allow them so far as possible to speak for themselves ; and if we now attempt to draw some general conclusions, we hope that these will be clearly distinguished from our statement of the facts.

We would venture to urge as a preliminary, that if any trustworthy conclusions are to be reached we must be careful to put the history of these centuries into connection with the whole history of the relations of the ecclesiastical and secular authorities in the West from the time of the conversion of Constantine. Nothing but confusion can arise, and indeed much confusion has arisen, from the attempt to isolate the great conflicts of the eleventh and twelve centuries. And especially is it necessary to take careful account of the complex character of the relations of the two authorities in the ninth century, if we are to understand the later conflict.

The truth is that the most distinctive element in the traditional political theory of the Middle Ages lay in the theory of a dualism in the structure of human society, that dualism of the spiritual and the temporal aspects of life, which was clearly expressed in the words of St Peter to the Jewish authorities, "We must obey God rather than men" (Acts v. 29). It is no doubt possible that there may have been a momentary hesitation when the Empire became Christian, but in the West at least, if there was any hesitation, it was only momentary, and the normal principle was apprehended and expressed, especially by St Ambrose in the fourth century and by Gelasius I. in the fifth—that is, the principle that human society is governed by two powers, not by one, by the Temporal and the Spiritual, and that these are embodied in two authorities, the secular and the ecclesiastical, two authorities which are each divine in their origin, and are, each within its own sphere, independent of the other. This principle is clearly and emphatically restated in the ninth century, and was always present to the minds of men in the eleventh and twelfth.

That this was substantially a new principle in the Western world is not doubtful. We would, however, venture to suggest that the movement of thought and feeling, both in countries of the Hellenic and Roman civilisations, and among the Jews in the centuries immediately preceding the Christian era, deserves a more full and precise treatment than it has yet

received. The importance of the new conception hardly requires any explanation, the importance that is of the conception that life on its spiritual side is not subject to the temporal authority, but independent of it. It is one aspect, and not the least important, of a new development of the significance of individual personality, of a new conception of liberty.

If, however, the conception was significant and its consequences far-reaching, the attempt to carry it out in the practical organisation of human society was, and is to this day, immensely difficult. It is easy to see, or to think that we see, the distinction between the spiritual and the temporal, when we think of them in general terms or in abstraction from the concrete realities of life ; but it is a very different

thing when we endeavour to apply the distinction to these. We have endeavoured in the first volume to illustrate some aspects of this from the circumstances of the ninth century, and the practical difficulties were greatly increased in the course of the tenth and eleventh centuries by the feudalisation of the position of the bishops and abbots, and their growing political importance ; but, apart from this, the question of the relative authority of the two powers presented immense difficulties, and the Middle Ages arrived at no final solution of them, nor, for that matter, have we achieved this to-day.

The subject which we have been considering in this volume is the question how far, in the eleventh and twelfth centuries, the dualistic conception was tending to be replaced by a theory of the unity of authority, of the supremacy of one power over the other. If we are to attempt to arrive at some conclusion we must be careful to distinguish three aspects of the question : first, how far in actual fact one power interfered with or exercised authority over the other ; second, how far there was developed a theory or principle of this ; and third, how far what may have happened, or the theories which men formed, had any real importance in the actual character of mediaeval political life and thought.

The first question is in our view of very great importance, for it seems to us clear that, whatever theoretical judgments may have been asserted in the period which we are considering, they were not for the most part the results of abstract speculation, or the expression of systematic thinking, but rather arose out of certain practical difficulties and demands. And the first thing that must be observed is that behind all the actions and theories with which we have dealt there lay that great movement of religious reform which grew up in the later part of the tenth century, the revolt against the degraded conditions of the Church and the Papacy, the movement of which the Cluniac reform was one expression, and of which for a time Cluny was the centre. It is clear that the great authority which the emperors, from Otto I. to Henry III., exercised over the Papacy and the ecclesiastical organisation, was due in the first place to the fact that the whole system of the Church was disorganised and degraded, and in the second place to the political importance of the great ecclesiastical officers. It is no doubt impossible to distinguish clearly between the influence of political ambitions and of religious principles as determining the action of Otto I. with regard to the Papacy, but it is true to say that the authority exercised by him and his immediate successors was justified by its results. And this is even more obviously true of the action of Henry III.

It is evident that so long as the imperial action coincided with and represented the reforming spirit, many of the most eminent and most zealous of the reforming Churchmen took little offence. This is, we think, clearly evident from the attitude of men like Peter Damian and Cardinal Humbert, though there were some who even then doubted or denied the propriety of the imperial action—men like Thietmar of Merseburg and Wazo of Liège, and the author of the tract ' *De Ordinando Pontifice*, '—but they seem to have been exceptions. The justification of the action of the secular authority in the tenth and eleventh centuries rested then not so much upon theory as on the practical conditions, and it must be observed that the action of Frederick Barbarossa with respect to the disputed election of Alexander III. was formally justified by similar considerations—that is, upon the contention that if the order of the ecclesiastical system was imperilled by its own officers, it was the duty of the head of the Temporal power to intervene, not to determine ecclesiastical matters by his own authority, but to set the proper ecclesiastical machinery in movement.

The authority claimed by kings and emperors in the appointment of bishops and abbots, while it may have been partly justified by similar conditions, was actually the result of the political position of the greater clergy, under the condition of that feudal system which had grown up in the tenth century ; and, as it proved, it was impossible to set it aside entirely. Until the death of Henry III. the reforming party, while asserting the rights of the electors, did not on the whole dispute the propriety of an important place in appointment belonging to the political head of the community.

If, then, it is the truth that the exercise of authority in ecclesiastical matters by the secular power had its reasonable justification in the actual circumstances of these centuries, it is also true that the revolt against this arose out of and was justified by new conditions, and these new conditions are on the whole clear. With the death of Henry III. the Empire ceased to represent the movement of reform, and indeed soon appeared to be the very centre of degradation, and it was this which brought about the conflict against lay "investiture," that is, appointment by the secular authority. It was thus that the conflict presented itself to the reforming party as a conflict for the freedom of the Church. It is no doubt true that other considerations and other ambitions may have entered into it, but it seems to us quite unreasonable to suggest that the demand for freedom was unreal: freedom to the reforming Churchmen had become the necessary condition of reform. It is this which gives a real significance to the first serious attempt to find a solution—that is, the revolutionary proposal of Paschal II. to surrender the "regalia" that is the political position and powers of the greater clergy. And when it proved impossible to persuade Churchmen to accept so radical a proposal, it became evident that the only possible solution lay in compromise, and that is the real nature of the settlement of Worms in 1122.

If we now look at the other side of the question, and ask how, and how far the ecclesiastical power came to claim and to exercise authority over the secular, it would seem that we are again dealing with objective facts and their results. It was the failure of the reforming spirit in the imperial authority which led to the demand for liberty, and it was the judgment of Gregory VII. that the secular authority in the Empire and also in France was not only the enemy of reform but also the real centre of corruption, and especially of simony, which moved him to attack not merely ecclesiastical offenders, but the secular authorities themselves. No doubt this was a new policy, for here as in all history the originaive or creative force of individual personality played an important or even determining part, but the policy itself was intelligible and relevant to the actual circumstances. It was no doubt, if not an entirely new thing, yet in that time an almost revolutionary action to excommunicate the king or emperor, but the action represented after all both the fundamental principles of ecclesiastical authority, and the actual circumstances of the time. The action was reasonable, but it involved consequences which went far beyond itself, for in the judgment of Gregory the right to excommunicate involved the right to depose.

There is no reason to think that in claiming the right to depose a king who had forfeited his place as a member of the Christian Church Gregory intended to assert any theoretical authority over the Temporal power in temporal matters ; but in and through Gregory's action the Spiritual power was in fact claiming a vast and indeterminate authority over the Temporal ; and while the Popes between Gregory VII. and Innocent III., at any rate after the death of Henry IV., made no very serious attempt to assert it, the fact remained that the authority had been claimed and the claim had not been surrendered.

We have arrived at the point where we must clearly turn to our second question, the question how far in these times there did grow up a theory of the supremacy of the one power over the other. If we are to avoid falling into confusion we must here be careful to make some distinctions. It might be asserted that one power was superior in intrinsic dignity and importance to the other; or it might be meant that the nature of one power was so much superior to the other, that, if any question arose between them, the judgment of the superior authority must prevail ; or it might be meant that one of the two powers was the source of the authority of the other, and continued in principle to possess a superior authority over it even in

its own sphere.

Of these conceptions the first would have been generally admitted. It would generally have been assumed by mediaeval thinkers that the matters with which the spiritual authority was concerned were of greater significance than those which belonged to the temporal, and that the dignity of the ecclesiastical office was greater than that of the secular. This is the position represented by Hugh of Fleury, and in spite of some of the phrases used by writers like Gregory of Catino and the author of the York Tractates, would hardly have been disputed.

The second raises a much more difficult question, for the general assumption of the Middle Ages was that each authority had its separate sphere, and in principle the case could not arise. It is of course true that all secular as well as all ecclesiastical authority was thought of as being subject to the law of God and the law of nature, and that all laws, ecclesiastical or secular, contrary to these were null and void. But the law of God and nature must not be confused with the law of the Church, with ecclesiastical law. We have dealt with this matter at some length in the second volume of this work,¹ and we there showed that there is little evidence that it was maintained that the ecclesiastical authority had a final judgment in cases of conflict between these laws.

The truth is no doubt that it is very difficult for us to interpret the mediaeval temper: we are still in a large measure under the influence of a conception of sovereignty as representing some absolute and even arbitrary authority in the State or the Church which was unknown to the Middle Ages. The only sovereignty they recognised was that of the law, and even that was subject to the law of God or nature. To them the question of a collision between the two systems of law was very different from what it is to us. A collision could only properly speaking occur if one authority intruded into the sphere of the other.

What are we then to say with regard to the third conception? It is in truth clear from the literature which we have examined, that if there was in the eleventh and twelfth centuries any theory of the supremacy of the Spiritual over the Temporal power in its own sphere, it can only be found in the

claims set out in some of Gregory VH.'s letters, or in Honorius of Augsburg and John of Salisbury, and possibly in the canonist Rufinus, for in no other of those writers whom we have examined can it be clearly found. We must therefore in the first place ask, Is a theory of this kind implied in Gregory VH.'s writings? On the whole we think not.

These claims were indeed in practice almost revolutionary; but we must, if we are to understand them, ask what they were in principle, and we think that the principle is sufficiently clear. Gregory claimed the same spiritual jurisdiction over kings and emperors as over any other laymen: for due cause he had the right to excommunicate them, that is, to cut them off from the society of the faithful. And he drew from this the conclusion that he had the right, for due spiritual cause, and for this alone, to declare them deposed as well as excommunicated, to pronounce the oaths of allegiance which had been taken to them null and void. It is true that he nowhere really discusses the rationale of this, and does little more than cite some doubtful precedents, but it would seem to be reasonable to think that in his view the position of an excommunicated ruler of a Christian society was an impossible one.

This is not the same theory as a claim that the Spiritual power, as represented by the Pope, had a supreme authority in temporal matters. Indeed it appears to us plain that his conduct from 1076 to 1080 is clear evidence that he made no such claim and held no such theory. For him the position of Henry and of Rudolph, once Henry had been absolved at Canossa, was a matter to be decided by the German people. If he proposed that he or his representative should take part in the decision, it was because he had been invited to do so. We do not mean that Gregory VII. had quite such a clear view of the circumstances as that which we have tried to put into words, but we think that something of this kind is implied in his conduct. The action and the words of Gregory undoubtedly implied a theory, but it was the theory that the spiritual authority was as complete with regard to spiritual matters, over those who held temporal authority, as over all other men, and that excommunication rendered them incapable of

holding authority ; it was not the theory that temporal authority was derived from the spiritual, or was subject to it in temporal matters.

It is not till we come to Honorius of Augsburg that we find anything of this kind. Here at last we do find something of it. Here at last we seem to find a theory which was formally inconsistent with the Gelasian principle, with the dualistic theory. For he seems to assert that the ecclesiastical authority was the true and only representative of Christ, and that the authority of the secular power was derived from it. It is true that this conception is confused to a certain extent by his reference to the Donation of Constantine. Honorius and Placidus of Nonantula are the first writers of whom we can say with any confidence that they interpreted the Donation as meaning that Constantine handed over to the Pope the whole imperial authority in the West; later in the century the same interpretation was set out by the canonist Pancapalea,¹ and Honorius even seems to interpret it as meaning that Constantine surrendered his whole authority in all parts of the empire. This conception was, however, not really quite consistent with Honorius's more revolutionary conception, that intrinsically all political as well as ecclesiastical authority belonged to the Spiritual power, and that the secular ruler derived his authority from it.

John of Salisbury seems to imply a similar theory, for he maintains that the two swords both belong to the Spiritual power, and that it is from it that the prince receives his sword, that the prince is the "minister" or servant of the "sacerdotium," and administers that part of the "sacred offices" which are unworthy to be discharged by the priest. This statement of John is, however, isolated in his work, and it must remain a little uncertain whether he really intended to assert all that it might imply.

The similar phrases of Bernard, which may have been in John of Salisbury's mind, are so incidental and casual that we cannot interpret them as meaning that he held this view, and the phrases of Hugh of St Victor are too vague to enable us to form any judgment. There is, as far as we know, only one other writer of the twelfth century whose treatment of the relation of the two powers may seem to tend in this direction, and that is the canonist Rufinus in his work on Gratian's 'Decretum.' We have discussed the passage at length in our second volume, and we can only say again that while he seems to interpret the phrase in Gratian's 'Decretum,' D. xxii. 1, "clavigero (i.e., Petro), terreni simul et celestis imperii iura commisit," as meaning that in some sense the Pope had authority in secular matters as well as spiritual, his words also suggest that he did not understand this to mean much more than that it was for the Pope to confirm the election of emperor, and to correct him and other secular rulers if they misused their authority.¹

These contentions of Honorius, of John of Salisbury, and of Rufinus are important, for they seem to mark the first appearance of a new theory, a theory which, in contradiction to the traditional view of the Church, would have reduced the conception of authority in the Church to one. In the next volume we shall have to consider the history and significance of this conception in the thirteenth century. There is no evidence that it had been put forward by any writer in the tenth or eleventh centuries ; in the twelfth it appears in Honorius, perhaps in John of Salisbury and Rufinus, but, it should be carefully observed, in them alone.

It may possibly be suggested that we should connect with this the curious episode of the letter of Hadrian IV. to Frederick Barbarossa, in which he was suspected of having intended to imply that the Empire was a fief of the Papacy, and the emperor the vassal of the Pope. If we are to think that Hadrian IV. meant to assert this, it would no doubt be significant of the papal policy ; but it must be remembered that Hadrian explicitly withdrew such a claim, or rather emphatically repudiated such a construction of his words.² And, in any case, a claim to feudal superiority would have been a totally different thing from a claim to the intrinsic supremacy of the Spiritual over the Temporal power.

The theory therefore that the authority of the Temporal power was derived from and subject to the Spiritual, so far as it existed in the twelfth century, was a merely private opinion set out by one or perhaps three important writers ; it must not be represented as having any official authority in the Church, and as being generally or widely held. It received no sanction from any

Council or from any Pope.

We must finally ask how far the actions and theories which we have been considering had any really important place in the actual public life of the eleventh and twelfth centuries. In endeavouring to answer this question, we must distinguish rather sharply between the significance of the principles and actions of Gregory VII. and that of the theories of those twelfth-century writers which we have just been considering.

The action of Gregory VII. contributed to produce a storm which raged at least till the death of Henry IV., and the principle that the Popes had authority not only to excommunicate but also to depose the secular ruler for spiritual offences continued to be held by the Popes for many centuries. That, however, is not the same as to say that the power of deposition was generally recognised ; the power of excommunication was probably not seriously questioned, but the power of deposition was another matter, and it was emphatically denied by many, even in the time of Henry IV. The truth is that, except when there was discontent and revolt against a king or emperor for other reasons, it generally had little significance. We shall have to consider the matter much more fully in the next volume, when we deal with the thirteenth century. As far as the twelfth century is concerned the matter had little importance.

The theories of Honorius, of John of Salisbury, and of Buhner, as far as the twelfth century was concerned, were merely the theories of individuals, and had no relation to the actual facts and conditions of life ; they did not themselves draw any practical conclusions from them, and there is no

reason to think that they had any important place even in the thought of the time. It was indeed just at this time that in the hands of the great administrators of England and of France the powers and authority of the State were being organised and extended, and it is absurd to think that the great kings and ministers would have recognised that they held an authority delegated to them by the Pope. The truth is that the difficulty of distinguishing clearly the precise border-line of the authority of the two powers was great, but the distinction was still generally held, and assumed as part of the divine order.

The principle of the relation between the two authorities as it was generally accepted throughout the time of which we are speaking is nowhere better expressed than in the words of the canonist Stephen of Tournai, writing in the latter part of the twelfth century. In the one commonwealth and under the one king there are two peoples, two modes of life, two authorities, and a twofold jurisdiction. The commonwealth is the Church ; the two peoples are the two orders in the Church—that is, the clergy and the laity ; the two modes of life are the spiritual and the carnal ; the two authorities are the priesthood and the kingship ; the twofold jurisdiction is the divine law and the human. Give to each its due, and all things will be brought into agreement.¹

PREFACE TO VOLUME V.

It is now a little more than thirty-five years since we began this work, and this volume represents more or less what we then thought to produce, but we had not gone very far before we recognised that in order to understand the real character of the political theory of the Middle Ages it was necessary to go back for many centuries, especially to the Roman Jurists of the second century, and to the Christian Fathers, and even to make some examination of the political conceptions of the post-Aristotelian philosophy, from which both Jurists and Fathers derived some of their most important principles. We have in previous volumes therefore endeavoured to set out something of the history of mediaeval political theory, and to give their due weight to the various traditions out of which it arose, and by which it was influenced in varying degrees. In this volume we have endeavoured to set out the culmination of this long process of development in the thirteenth century.

We hope to publish another volume dealing with the movements of political thought from the fourteenth to the sixteenth centuries—that is, during the period of the Renaissance—and to inquire what if any new conceptions of importance took their rise during these centuries, and thus to see more clearly how far modern political conceptions are continuous with those of the Middle Ages.

PART I.
POLITICAL PRINCIPLES.
CHAPTER I.
INTRODUCTION.

WE have endeavoured in previous volumes to discuss the origin and to trace the development of what seem to us the most characteristic political conceptions of the Middle Ages, and we have seen that the history which we have been considering is the history of ideas and principles very living and very closely related to the actual experience of Western Europe. We have traced their origin to the post-Aristotelian philosophy, especially as represented in the works of the Christian Fathers and in the Roman Law books, and to the principles involved in the institutions of the new political societies which were built up upon the ruins of the Roman Empire in the West. We have considered how far these traditions had been affected by the development of Feudalism, by the revived study of the Roman Law in the twelfth century, and by the parallel development of the systematic treatment of Canon Law. In this volume we have to consider the full development of these conceptions in the thirteenth century, and their embodiment in the system of the representation of the community which in England we call the Parliament. For it is from the Middle Ages that the modern world has inherited the representative system, and this system was the natural development of the fundamental political conception of mediaeval society—that is, that the community is the source of all political authority.

We are indeed confronted with a certain difficulty when we endeavour to trace the history of civilisation. There is a sense in which it is true to say that the civilisation of the Middle Ages culminated in the thirteenth century, and that this civilisation is different from the modern. In economic conditions and structure, in scientific and philosophic thought, in some aspects of art, in some intellectual forms of religion, there are certainly great and significant differences between the mediaeval and the modern world. It may be said that in all these various aspects, the civilisation of the Middle Ages found its most complete expression in the thirteenth century, and that, with its close, it began to show evident signs of decay, and that it was only very slowly and gradually that the new system of the modern world emerged.

All this is in a measure true, and yet it is also doubtful whether it is more than a half-truth, and, like all half-truths, at least as misleading as it is illuminating. We cannot here deal with the general question, we must confine ourselves to the political aspect of civilisation. And here the conception of the existence of some profound gulf between the mediaeval and the modern is a mistake ; the history of political principles and even institutions was continuous. The Renaissance may or may not represent a really new beginning in philosophy and science, it did not do so in political ideas and forms.

It is no doubt true that there is one apparent contradiction to this continuity, and that is, that the conception of the union of Temporal and Spiritual power in one authority has disappeared. We have in this volume to deal with the final development of this conception, and we shall consider what was its real character. We would, however, venture to say at once and emphatically what we think is evident from the previous volumes of this work, that even so far as this conception was really important in the Middle Ages—and how far and in what sense it was so we shall have to consider— it had little or no relation to the actual character and development of political ideas in general. We venture to say that it will become clear to any one who considers the actual character and sources of the political ideas of the Middle Ages that they were wholly independent of this conception ; that the principles of the supremacy of law, and of the community as the source of authority, were substantially unaffected by the question of the relations of the political and religious authorities.

We do not mean to undervalue the significance of the relation of the Temporal and Spiritual powers, nor do we mean to suggest that the great conflicts of the Middle Ages have not left behind them a principle of the greatest and most enduring importance—that is, the principle of the independence of the spiritual life from the control of the political authority of society. We

do not undervalue this, for, indeed, we think that it is just here that we find the most profound of the differences which separate the ancient world from the mediaeval and modern. And yet it remains true that this conflict did not in any intrinsic way affect the development of the general political ideas of the Middle Ages, and it is with these that we are concerned.

In this volume we have to consider the full development of the political theories whose origins we have endeavoured to trace in the earlier volumes, and their relation to the various political experiments of the thirteenth century, and especially to the system of the representation of the community. We shall now also find ourselves in a position to consider the revival of the Aristotelian political ideas, especially in the works of St Thomas Aquinas, and to ask how far this influence was of real importance. In the next volume we shall have to consider how far it was permanent.

CHAPTER n.

CONVENTION AND NATURE.

THE political theory of the Middle Ages is formally separated from that of Aristotle and Plato, and from that of the nineteenth century, by one great presupposition—that is, that the institutions of civilised society are founded upon “convention,” not upon “nature.” Not, indeed, that this distinction is only mediaeval, for it continued to dominate European thought until the latter part of the eighteenth century. It is, indeed, only with Montesquieu, Rousseau’s ‘*Contrat Social*,’ and Burke, that the characteristically modern return to the Aristotelian and Platonic mode of thought was established. No detailed discussion of this is necessary, for it is obvious that the conceptions of Hooker, of Hobbes, and of Locke, are all in their different ways founded upon the distinction between “nature” and convention.

The normal political theory of the Middle Ages was not Aristotelian, but was derived from the post-Aristotelian philosophy mainly through the Roman Law and the Christian Fathers. It was not till the thirteenth century that mediaeval thinkers became acquainted with the Aristotelian political theory. In this chapter we shall consider the effects of this discovery in the attempt made by St Thomas Aquinas to restate some fundamental conceptions of political theory in the terms of Aristotle.

The post-Aristotelian political thinkers regard “nature” as primarily expressing the original or primitive condition of the world and of human life, a condition of innocence and felicity, out of which men passed owing to the appearance of vice or sin in man.

The Stoics, at least as represented by Posidonius in Seneca’s account, looked back to a golden age in which men were uncorrupt in nature, lofty of soul, and but newly sprung from the gods, and in which they lived together in peace and happiness, requiring no coercive government, and seeking for no individual property. Out of this happy and innocent life they passed, because evil appeared in the world. They became ambitious, and were possessed by the lust of authority ; they became avaricious, and would not be satisfied with the common enjoyment of the good things of the world.¹

This conception of the difference between the natural state and the conventional is implied in the treatment of “Natural Law” in the Roman jurisprudence both of the second century and of the sixth, and, indeed, it is in some of the phrases which belong to these that the conception is most dramatically embodied. As far as the natural law is concerned, all men are equal, by natural law all men should be born free, says Ulpian ; slavery, says Florentinus, is contrary to nature.² The treatment of the subject of “nature” in the Roman Jurists is not indeed free from ambiguities, and in our first volume we have endeavoured to disentangle these, but the general conclusion is clear.

When, therefore, we find the same conceptions in the Christian Fathers, there is no doubt as to their source. They were not specifically Christian ideas, but they fitted without difficulty into the Pauline interpretation of the story of the original innocence of man and his fall. And these were the conceptions of all the Fathers from St Irenaeus in the second century and St Augustine in the fifth to St Gregory the Great in the sixth. They all present one and the same view of the original conditions of human life, and of the origin of the institutions of political society. Government, says Irenaeus, was made necessary because men departed from God,

and hated their fellow-men and fell into confusion and disorder of every kind.¹ God, said St Augustine, made the rational man to be the master of other animals, not of his fellow-men, and the lust of power of man over his fellows, who are his equals, is an intolerable arrogance of the soul.² St Gregory the Great bade men who are placed in authority to consider not their power and rank, but the equality of their nature, for man was by nature set over the irrational animals, not over his fellow-men.³ All this represents, not the desire to depreciate the dignity or importance of the political order, as some writers have tended to think, not being fully aware of the post-Aristotelian theory of society, but only the assertion of the artificial or conventional character of organised society and its institutions, as contrasted with the happy anarchy of the primitive world.

It is true that we should be glad if we could see more clearly how these curiously unhistorical and infelicitous interpretations of human institutions should have replaced the sane and penetrating conceptions of Aristotle, and his apprehension that the social and political order was not the result of vice, but rather the method of the progress of man towards the attainment of his true nature. Unfortunately, the philosophic literature of the last centuries of the pre-Christian era has perished, or survives only in fragments, and we cannot do more than conjecture the causes which lay behind this change.

It is, however, reasonable to say that one explanation of the change was that, with all its merits, the Aristotelian theory of society did not take account, or at least did not take sufficient account, of some aspects of human nature which were apprehended during the centuries between Aristotle and the Christian era, and that also a certain undue conservatism of thought in Aristotle brought about an intelligible reaction. Aristotle's conception of political society as the necessary condition of human life and progress, and of the political order as founded upon the conception of a moral justice, were profound and permanent. But he failed to understand the complementary truth of the equal and free personality of men; and he accepted the actually existing inequality of the Greek and the Barbarian as though it were a final reality, instead of what it proved itself to be, merely a phase in the historical process.

It was not unreasonable when Aristotle recognised the gulf which lay between the Greek with his highly developed intellectual and political civilisation, and the crude barbarism of the Oriental world as he knew it; but a few generations of the Hellenistic civilisation were enough to show that he had taken the existing fact to be a perpetual and necessary truth. And in the same way, in his profound apprehension of the meaning of the social and political order of human life, he failed to take sufficient account of the fact that though, in his own phrase, the State is prior to the individual, the State exists for the individual, and not the individual for the State. The truth is that it was the apprehension of the equality of human personality which for the time being seemed to undermine the whole Aristotelian conception of society, and provoked a reaction in which, for the time, men could only think of the actual world as representing the result of some primeval catastrophe. For the equality of human personality was not a speculation but an observation of fact; it was Aristotle's attempt to distinguish between the natural master and the natural slave which proved itself to be a merely speculative theory. The Greeks went out into the world, and though a mere handful of men, the crazy empires of the East crumbled into dust before them; but as they settled down among the conquered peoples, they found them capable of learning all they had to teach. And presently a greater empire than the Macedonian found itself first puzzled and then conquered by an assertion of the independence of personality which refused to submit even to the majestic authority of Rome. The words attributed to the Apostles, "whether it be right in the sight of God to hearken unto you rather than unto God, judge ye,"¹ represented an immense change

in the relation of the individual personality to society. We do not mean that this movement was peculiar to Christianity: the claim that man is amenable through his own reason and conscience to some greater authority than that of the State had been expressed many centuries before with a profound and moving eloquence in the 'Antigone,' and Sophocles was

only anticipating the movement of thought and feeling of which the philosophical conception of the equal individual personality is the form.

It was perhaps no great wonder that in the first clash of the yet unsolved antinomy of the freedom of the individual and the authority of society, men should have found the explanation in the poetic tradition of that catastrophe by which, as they thought, the innocent liberty of the primaeval world, in which men were good and happy, had been lost, and a harsher and sterner order had been required to preserve at least some relics of the gracious past. For this is also the meaning of that law of nature of which philosophers and jurists and Christian Fathers spoke ; it expressed principles which might not be wholly realised, but which should at least limit and direct and control the authority of human society, while the positive law and order of society embodied the disciplinary measures which the faults and vices of human nature, as it actually is, required.

Such, at any rate, was the theory of the nature of the institutions of society which the Middle Ages inherited from the post-Aristotelian philosophy through the Boman Law and the Fathers, and we have endeavoured in previous volumes to show how these conceptions were expressed both in the legal and general literature of those ages. It is not necessary to add much by way of illustrating the continuance of the same conceptions in the thirteenth century. We have in the second and third volumes of this work illustrated this from the works of the Civil and Canon Lawyers, and even from the Feudal Jurists, and here, therefore, we only cite one or two further examples.

The first occurs, in that oddly irrelevant and rhetorical manner which is characteristic of the Fathers and of most of the mediaeval writers, in the introduction to a Constitution of the Emperor Frederic II. of the year 1239, in which he appointed his son Henry Vicar-General of Tuscany. The Constitution represents Justice as establishing the authority of princes in order to restrain the insolence of transgressors, for men would gladly have avoided the yoke of lordship, and would never have surrendered that liberty which they had received from nature if it had not been that the license of wicked men was actually inflicting grave injuries on the human race, and this compelled nature to submit to justice and liberty to obey judgment.¹ The rotundity of the phrases is sufficiently absurd, though it is characteristic of the Bologna Jurists when they were in a rhetorical mood, but they represent the contrast between the natural and the conventional conditions of human life.

The other example which we cite is even more significant, for it is to be found in the works of Albert the Great, the teacher of St Thomas Aquinas, and with him we are on the verge of the recovery of the Aristotelian political theory. In his ' Summa Theologica ' he cites the contention that the subjection of man to man is either actually slavery or has something of its character, and was established on account of sin, as is evident from the curse of Noah upon Canaan. For Gregory the Great had said that nature brought forth all men equal, and therefore that pride which leads a man to desire to be set over his fellow-men is contrary to nature.²

As we have said, it is needless to multiply examples of what had been for many centuries the accepted tradition, that the institution of coercive government was regarded as a convention, which did not arise from nature, but was due to the appearance of evil in the world. The pre-Thomist writers of the thirteenth century did not, as far as we have observed, add anything material to the tradition.

the recovery of the Aristotelian writings ; the subject has been discussed in various works. And we are not here concerned with the far-reaching effects of this in the development of the general philosophic system of the Middle Ages. That is again a large and important subject, with a literature of its own. It is enough for our purpose to observe that St Thomas Aquinas was in possession of the whole range of the work of Aristotle, including the Politics and the Ethics, and that he not only studied him carefully, but that his own work on politics represents the results of this study.

It was with St Thomas that the Stoic and Legal and Patristic traditions, which had hitherto dominated the more abstract aspects of the Political Theory of the Middle Ages, began to be crossed by a new influence. In the traditional theory the great institutions of human society,

coercive government, slavery, and property, are the results of the vicious desires and impulses of men, not of the original character of their true nature ; but they were also the means by which these vicious impulses might be restrained or limited. In the terms of the Christian Fathers, they were at the same time the results of sin, and the divine remedies for sin.

St Thomas does not in all respects directly and categorically contradict these conceptions, but under the influence of Aristotle he does very carefully and clearly set out a conception of human society and its institutions which is fundamentally different. In order, however, that we may properly appreciate his position, we must consider separately his treatment of government, of property, and of slavery. We begin by considering the terms in which he describes human nature in its relation to government. If man could live alone, he says in his treatise, 'De Regimine Principum,' he would require no ruler, he would be king over himself under God, directing his actions by that reason which God has given to him. But this is not possible, for it is natural to man to be a social and political animal. He is driven to society by his own weakness in physical powers as compared with other animals ; but in place of these, nature has given him reason and the power of speech, by which he can communicate with other men. Man must therefore live in society with other men, and by the use of his reason render and receive mutual help ; and this society must be a political society, for without some system of rule it could not hold together.¹

In the ' Summa Theologica ' he sets out the same principles, but with rather more precision, and in contrast with the older view. He was confronted with the dogmatic statement of St Augustine, to which we have often referred, that in the state of innocence man was not under the lordship of man. He meets this by pointing out that the word " dominium " may be taken in two senses, as signifying the lordship of a man over his slave, or as the rule exercised by one man over other free men. In the first sense he admits that there would have been no lordship of man over man in the state of innocence, but in the second sense the rule of man over man would have been lawful even in that state. And, he goes on to say, this would have been so for two reasons : first, because man is naturally a social animal, but social life is impossible unless there is some authority to direct it to the common good ; and secondly, because it would have been " inconveniens " if any one man excelled the others in knowledge and justice, that this superiority should not be used for the benefit of the others.¹

The correspondence between St Thomas' conception of the relation of man to political society and that of Aristotle requires no discussion. The relation of these two passages to the first chapters of the first book of Aristotle's Politics is evident, and it is also evident that the principles which St Thomas was setting out were really contradictory to the Stoic and Patristic tradition which till this time dominated the Middle Ages. To St Thomas the State, or Political Society, was a natural, not a conventional institution.

As we have already said, the question of the permanence of this recovery of Aristotelianism is one which we shall have occasion to consider in the next volume. It is enough for us to observe that the immense influence of St Thomas had almost immediate effect, and we shall find the best illustration of this in the work of Egidius Colonna in the latter years of the thirteenth century.

Egidius' treatise, ' De Regimine Principum,' is obviously and explicitly related to the Aristotelian Politics, to which he constantly refers, and it was directly or indirectly from St Thomas that he had learned to know Aristotle. He gives an account of the reasons why the State (civitas) was created which is founded immediately upon the " Politics "—namely, that men might live and have enough, and that they might live well and virtuously.¹ He asks why, if this is so, if man is naturally political (civilis), there are some who do not live thus, and he answers, some because they are too poor (meaning by this, presumably, a pastoral or hunting people), some because they are vicious and criminal, and some because they seek a more perfect life of contemplation. And it is in this sense that he interprets Aristotle's saying that he who is unable to live in society, or who has no need because he is sufficient in himself, must be either a beast or a god.² In the following chapter he explains the statement that the State is natural, first, by contending that it is the proper development of the family and the village, and

secondly, by an appeal to Aristotle's principle that the nature of a thing lies in its end or perfection.³

We can then trace very clearly the development in the latter part of the thirteenth century of a new conception in political theory, and can recognise in St Thomas Aquinas and Egidius Colonna the effect of the recovery of the Aristotelian philosophy and its conception of the State, not as a conventional institution arising out of the vicious or sinful condition of human nature, but rather as the natural expression and embodiment of the moral as well as the physical characteristics of human nature. In order, however, to complete our appreciation of the nature of this change, we must consider how far we find the same principles in the treatment of the other great institutions of society, and especially of property and slavery.

We have in previous volumes set out the principles of the Fathers and the Canon Lawyers with regard to these, and have seen that to them it was clear that private property did not belong to the primitive order, but arose from the vicious and greedy appetites of men.¹

It is interesting to observe that these were still the principles of Aquinas' great Franciscan predecessor in systematic theology, Alexander of Bales, who seems to be unaffected, at least in this matter, by the Aristotelian influence; but, as we shall see, both he and some of the Canonists of the middle of the thirteenth century were drawn by their study of the Roman Law to another interpretation of the "natural law." In one passage he discusses carefully the meaning of natural law, and asks whether it can be changed. He cites St Isidore of Seville as saying that by the natural law all property is common, and says that if now a man may lawfully possess a thing as his own, it would appear that the Lex Naturalis is mutable. He replies to this that when it is said that by natural law all things are common, this refers to the condition of man before he sinned, but when man had sinned private property became lawful by natural law.² In another part of the same discussion he

maintains that the natural law prescribes some things as of obligation, some things as good, and some as equitable. It is of obligation that in case of necessity all things are common. It is good that in the state of nature, when all things were well ordered, all things should have been common, but that in a corrupt state some things should be the property of particular persons, otherwise the wicked would take all and the good would be in want. It is equitable that some things should never be appropriated, while others which belong to no one should belong to the person who "occupies" them.¹

Alexander of Hales very clearly represents the patristic and normal mediæval view that private property did not belong to the primitive condition of innocence, but was the result of sin. It is to the influence of some phrases of the Roman Law² and to the recognition by some of the Bologna Civilians like Azo that the term "jus naturalis" could be used in different senses,³ that we may trace Alexander's conception that in one sense private property may be related to natural law. His assertion that in the case of necessity all things are common is related to the theory of the Fathers and of the Canonists,¹ and we shall return to the subject when we deal presently with the theory of property in St Thomas Aquinas.

When we turn from Alexander of Hales to the Canonists of the middle of the thirteenth century, we find the same combination of the influence of the Patristic tradition and of the Roman Law. Innocent IV., in his 'Apparatus,' or Commentary on the Decretals, discusses the origin and rationale of private property in terms which are related to both traditions. The earth, he says, is the Lord's; He is the creator of all things, and in the beginning of the world these were the common property of all men. It was by the custom of our first ancestors that private property arose; but this was good, not evil, for things which are common property are apt to be neglected, and the common ownership of things tends to discord. Men were therefore permitted to take by occupation that which belonged to no one but to God.² The great Canonist whom we know as Hostiensis defines carefully the nature of possession, and says that it is natural—that is, it was created by the "natural law of nations," not by the primeval law which belonged to all animals.³

It is clear that these writers did not look upon private property as strictly primitive, but that

it was created by human custom. If they sometimes call it “natural,” this is due to the ambiguity of some of the phrases of the Roman Law and the Bologna Civilians. They still represent the Patristic and Stoic conception of property as, properly speaking, a conventional and not a natural institution.

When we now turn to the treatment of private property by St Thomas Aquinas, we find ourselves in a very different atmosphere. He was, indeed, confronted at the outset with the dogmatic statements of the Fathers, and especially of St Ambrose, that nature had given all things to men in common, that God meant the world to be the common possession of all men and to produce its fruits for all, and that avarice produced the rights of possession.¹ He puts the question -with characteristic fairness and precision in the ‘Summa Theologica.’ It is contended, he says, that it is not lawful for a man to possess anything as his own, for everything which is contrary to natural law is unlawful, and according to natural law all things are common, and he refers to St Basil, St Ambrose, and Gratian’s Decretum as representing this view. He replies by making a distinction in the relations of men to things as property; the first consists in the power of acquiring and distributing things, and this is lawful, for it tends to efficiency and to the tranquillity of society; the second is their use, and as far as this is concerned men should hold them in common.

In the detailed answers, which in his method follow the general one, he replies to the contention that by natural law all things are common, and says that this does not mean that the natural law prescribed that all things are to be in common, and nothing is to be held as an individual possession, but that it is not the natural law which establishes the separation of possessions, but human agreement, and this belongs to positive law. Private property is therefore not contrary to natural law, but is added to natural law by human reason.¹

It is true that in this passage St Thomas does not refer directly to Aristotle, but it is fairly clear that his arguments are in large measure founded upon the discussion of the subject in ‘Politics,’ ii. 5, including the important distinction between the right of acquisition and the right of use. The principles laid down by St Thomas in this passage may be further illustrated from two other places in the ‘Summa.’ In the seventh article of the same “question,” he discusses more fully the significance of the principle that, as far as the use of things is concerned, the common right of property continues. He considers the question whether it is lawful to steal in case of necessity, and cites the ‘Decretals’ as imposing a penance of three weeks upon the man who commits theft from hunger, and St Augustine as saying that it was not lawful to steal in order to give alms. St Thomas dogmatically asserts the contrary, and maintains that in a case of necessity all things are common, and that in such a case it is not sinful to take another man’s property. He justifies this by a detailed argument. The institution of human law cannot abrogate the natural or Divine law, and according to the natural order which was instituted by the Divine providence, the inferior things were to serve men’s needs, and therefore the division or appropriation of things which was instituted by human law may not hinder their use for this purpose, and, therefore, if any man possesses a superfluity of things, the natural law requires that this should be used for the maintenance of the poor. The administration of this help is normally left to the discretion of the owner of superfluous property; but if there is evident and urgent need, and there is no other means of help, then a man may openly or secretly take another man’s property for his need, and this has not properly the character of theft; and, he adds, in a case of the same need, it is lawful to take another man’s property to help one’s neighbour who is in want.¹

In a very important section of the ‘Summa,’ to which we shall return later, where he deals in detail with the whole conception of natural law, he recognises very frankly the weight of the tradition that by natural law all things are common. He quotes the famous passage from the ‘Etymologies’ of St Isidore of Seville, in which, as the Middle Ages understood it, this doctrine is set out, but he replies to it by the contention that while natural law did not create private property, this was established by human reason, because it was useful to human life, and thus

natural law was not changed but only added to.¹

The position of St Thomas with regard to the institution of private property represents an attempt to harmonise the principles of the Fathers with those of Aristotle. He is not prepared, in face of the patristic authority, to maintain that it is “ natural ” in the proper sense of the word, but he refuses to admit that it is a consequence of sin. It is a “ conventional ” institution, but an institution created by human reason, for the advantage of human life. But also, it is limited by the principle of the natural law that material things were intended by God to meet the needs of men, and therefore he understands the right of private property to be the right to acquire and to control the destination of material things, but not an unlimited right to use them for one's own convenience.

We turn to the theory of slavery. We have seen that the Canonists and Civilians were agreed that slavery was not an institution of the natural law, and the Canonists held that it was a consequence of sin.¹ Innocent IV. thus merely restated the traditional doctrine when he said that the lordship over men as property belongs to the law of nations or the civil law, for by the law of nature all men are free.² Hostiensis, indeed, describes slavery as created by the divine law, confirmed by the law of nations, and approved by the Canon Law; but he probably does not mean by this more than that it was a divine punishment and remedy for sin, the doctrine both of the Fathers and the Canonists.³

St Thomas endeavoured to bring together the tradition which he inherited from the Stoics and the Fathers with what he had learned from Aristotle. In one place he maintains that in the state of innocence there was government, but no slavery. It is of the essence of slavery that while the free man is “ causa sui,” the slave “ ordinatur ad alium,” and is used by the master for his own advantage, and this could not have existed in the state of innocence.⁴ In another place, however, he deals with the question in more detail, and explains the nature of slavery under different terms. St Thomas in this place is discussing directly the relation of the *jus gentium* to the *jus naturale* (we shall return to this subject later), and his reference to slavery is incidental to this discussion. He first states his reasons why it might be contended that the “*jus gentium*” is the same as the “*jus naturale*,” and the second of these reasons is that while Aristotle says that slavery is natural, for some men are naturally slaves, St Isidore says that slavery belongs to the *jus gentium*; the *jus gentium*, therefore, is the same as the *jus naturale*. Against this he cites St Isidore as distinguishing between natural law, civil law, and the law of nations. He endeavours to solve this opposition by arguing that *jus* may be said to be natural in two different senses, in the absolute sense, or in relation to its consequences. The *jus gentium* represents that which man's natural reason declares with regard to the consequences of *jus*. Slavery, therefore, belongs to the *jus gentium*, and is natural, not in the absolute sense, but because it is useful for the slave to be controlled by the wiser man, and for the wiser man to be helped by the slave.¹

In another passage, to which we have already referred, he contends that slavery, like private property, was not indeed instituted by nature, but was created by man's reason for the convenience of human life, and represents not a contradiction of the natural law, but an addition to it.¹

It is not very easy to arrive at a confident judgment with regard to the whole of St Thomas' position as regards slavery. For while in some places he seems to follow Aristotle in his judgment that slavery rests upon the ground that there are men for whom it is better to be slaves than to be free, and that slavery is therefore an institution of human reason, in others he seems to speak of it as an institution which could not have existed in the natural or primitive state of innocence.

We may perhaps suggest that he meant that in the state of innocence there would have been no such difference in human nature as to justify the relation of master and slave, but that, as these differences exist in the actual conditions of human nature, the relation has become natural and justifiable. Slavery would thus be an institution not belonging to the natural condition of human nature, but rational, and in the secondary sense natural in the actual corrupt and sinful conditions. His treatment of slavery seems, therefore, to differ from

his treatment of government and property, for these are not the results of sin, while slavery is.

The followers of St Thomas Aquinas, Ptolemy of Lucca and Egidius Colonna, seem to accept the Aristotelian conception of slavery without any apparent qualification. Ptolemy of Lucca, in that part of the ' *De Regimine Principum* ' which is generally attributed to him, says that some men are, through a defect of nature, wanting in reason, and such persons should be set to work "per modum servile," because they have not got the use of reason. This may be called naturally just, as Aristotle says in the first book of the *Politics*.¹ Egidius Colonna in the same way assumes without question that there are men who are naturally slaves, for they are deficient in intelligence, and cannot rule themselves.²

We have said enough to illustrate the nature and the extent of the influence of the recovery of the Aristotelian *Politics* on St Thomas Aquinas and some other writers of the end of the century in modifying the traditional Stoic and Patristic principles, which had up till this time formed the framework of mediaeval political theory. We shall presently have occasion to consider how far this affected the less formal aspects of their theory, and we shall then be in a better position to judge how far the influence of Aristotle was really and not merely formally important.

CHAPTER HI.

THE DIVINE NATURE AND THE MORAL FUNCTION OF THE STATE.

WE have endeavoured in previous volumes to set out clearly the post-Aristotelian and mediaeval conceptions of the conventional nature of the great institutions of human society as being the results of human vice and sin; and that these were conceived of as being divinely appointed remedies for sin. It is from this standpoint alone that we can understand the mediaeval conception of the nature and principles of the State and its authority.

We have dealt with the subject in detail, as it is presented by the Canonists and Civilians, in the second volume, and in the general and controversial literature of the eleventh, twelfth and thirteenth centuries in the second and third. We hope that we have said enough to show that the judgment of the Middle Ages was clear and continuous, that while the coercive political authority of man over his fellow-men was made necessary by sin, it was appointed by God as a remedy for sin. The State was a divine institution, whose purpose and function it was to maintain righteousness or justice.

In the second part of this volume we shall return to the question of the relations of the two powers, the Spiritual and the Temporal, but we hope that it is evident from previous volumes that, whatever opinion might be held about this relation, there was no real difference as to the principle that the authority of the Temporal Power was a divine authority. Whatever confused ideas St Augustine may have had in setting out the distinction between the *Civitas Dei* and the *Civitas Terrena*, even if he meant to suggest (and we do not think that he meant to do this) that the *Civitas Terrena* was not a divine institution,¹ the confusion, if it existed in his mind, began and ended with himself, and it is an inexcusable blunder to overlook this fact. If Gregory VII. had for a moment inclined to think—and we have given reason to think it was only for a moment—that the independence and authority of the Spiritual Power would be best vindicated by denying the divine nature and authority of the State, it is clear that he had substantially no followers in the eleventh and twelfth centuries.²

In this chapter we propose to give a short account of what the writers of the thirteenth century say upon this matter, and especially we shall endeavour to summarise the careful statements of St Thomas Aquinas ; but it must be frankly confessed that there is little if anything of substantial importance to be added to what has been said in earlier volumes.

We would begin by drawing attention to a writer whose most famous work forms one of the series of encyclopaedic dictionaries of the Middle Ages. For the ' *Speculum* ' of Vincent of Beauvais belongs to the same series of works as St Isidore of Seville's ' *Etymologies* ' in the seventh century, and Rabanus Maurus' ' *De Universo* ' in the ninth ; the fashion of encyclopaedias is not peculiar to the eighteenth or the nineteenth century. Vincent of Beauvais' work belongs to the middle of the thirteenth century. It has naturally little, if any, independent or personal value, but it is interesting as summing up much of the general

knowledge and many of the conceptions of his time—that is, just before the development of the Aristotelian influence on political theory.

Among other matters he deals with the nature of the State. Among the first passages which he cites on this is Cicero's definition of the "Populus" as "Coetus humani multitudinis, juris consensu, et concordia communione sociatus"; he takes this from St Isidore's 'Etymologies,' ix. 4. He is aware of St Augustine's criticism of this,³ but though Vincent mentions this it does not seem to affect his judgment, for he goes on, in terms which would seem to be related to those of John of Salisbury, to describe the proper character of the prince as that of one who seeks to promote "semitas." A little later he cites from Gratian's 'Decretum' the famous passage in which Pope Gelasius I. had laid down the fundamental mediaeval principle that it was Christ Himself who separated the two powers, the Spiritual and the Temporal, and that it was Christ Himself who allotted to each its supreme functions. And he cites a passage from Hugh of St Victor, in which he speaks of the Church, the holy "Universitas" of the faithful, the body of Christ, as being divided into two orders (ordines), the laity and the clergy, and each of these is to be animated by justice.¹ All these phrases represent the commonplaces of mediaeval political theory, but they serve to bring out its normal principle, that the State is of divine origin, and that its end or purpose is a moral end—the maintenance of justice.

If these phrases represent the normal opinion of the Middle Ages, we may ask first how far they correspond with the opinions of the extreme Papalist writers of the thirteenth century. We may take a few examples. The first is from one of the most extreme of all Papalist writers, Ptolemy of Lucca, the continuator of St Thomas' 'De Regimine Principum,' with whose theory of the relation of the Temporal and Spiritual powers we shall deal later. He is clear and emphatic in maintaining that all temporal authority comes from God, who is the first ruler,² and this is evident in the nature of the end or purpose for which the State exists—that is, the life of virtue, and the attainment of eternal felicity—that is, the vision of God.³

With these words we may compare those of Egidius Colonna, who, in one of his writings at least, represents the standpoint of the most extreme supporters of Boniface VIII. in his conflict with Philip the Fair of France. In his treatise, 'De Regimine Principum,' the King is the minister of God and the ruler of the multitude, and God requires Kings and Princes to rule the people with prudence and justice. In another place he contends that the King must be a man of such justice and equity that he can direct the laws.¹

We may also observe the words of an anonymous writer, certainly one of the most determined and extreme of all the supporters of Boniface VIII., of whom we shall have more to say later. He has the courage to try to explain away the significance of the Gelasian principle of the division of the two powers; but even in doing so he does not venture to suggest that the Temporal power does not come from Christ, but only that both powers belong to the Pope, while the exercise of the Temporal Power belongs to the Prince.²

If, then, it is clear that even the most extreme Papalist writers recognised that the Temporal as well as the Spiritual Power came from God, it might seem almost unnecessary to illustrate this principle from the general literature of the time, and yet this is so important an aspect of the political ideas of the Middle Ages that it is worth while to illustrate it a little further. There is an interesting little treatise, 'De Regimine Civitatum,' by a certain Civilian, John of Viterbo, written, as would seem probable, not earlier than 1261, to which also we shall have occasion to return. It is interesting to observe the emphatic terms in which he sets out the divine nature of political as well as of ecclesiastical authority. Two great gifts, he says, God has bestowed upon man—these are the "sacerdotium" and the "imperium"; they have, indeed, different functions, but they proceed from the same source. Their functions are different, and this is indicated by the two swords which were brought to the Lord. It is not less important that, while the author is clear that the authority is good, for it comes from God, the exercise of that authority may be evil. The function of the authority is to promote justice, and the abuse of it has no divine authority.¹

It would be superfluous to deal with the emphatic repetition of the Gelasian doctrine that

the Temporal as well as the Spiritual Power was ordained by Christ in such a eulogist of the Empire as Jordan of Osnabriick,¹ or its frequent assertion in the Imperial Constitutions.² It is, however, worth while to notice one or two other of the statements that the purpose and the test of legitimate authority is justice.

There is a very interesting commentary on the statutes and constitution of the kingdom of Naples, to which we shall refer again, by Andreas de Isernia, a jurist of the school of Naples of the thirteenth century. He holds a high conception of the legislative power of the King of Naples, but he is clear that any law which is lacking in "ratio " or in justice is no law at all. The prince is appointed to do justice and judgment, and is not to be called a king when he departs from justice. In another place he applies this principle to the case of a king who intends to seize and ill-treat his vassal contrary to justice; the vassal in such a case is not disobedient if he refuses to obey the king's summons, for in such action the king is no king, and he will lose his rights over his vassal, just as the vassal would lose his fief if he did not render justice to his lord.³

In one of the most important treatises which belong to the conflict between Boniface VIII. and Philip the Fair, John of Paris develops the principle of the moral purpose of the State still further. He argues that the contention that the royal authority only deals with material things is false, for the function of this authority is to set forward the common good—that is, not merely the common good in general, but that good which consists in the life which is according to virtue. This is what Aristotle meant when he said that the aim of the legislator is to make men good and to lead them to virtue.¹

We cannot here pursue John of Paris' arguments further— we shall return to them later,— but it is interesting to observe that the Aristotelian influence only served to bring out and to strengthen the traditional mediaeval doctrine that the function and justification of political authority was its moral end.

St Thomas Aquinas does not add anything material to these principles, but he sets them out with characteristic precision and force. He is equally emphatic in asserting the divine nature of political authority, and the moral end or purpose for which this exists. In one place in the ' Summa Theologica ' he discusses the question whether Christian men are bound to obey the secular authorities. He mentions various arguments which might be alleged to prove the contrary, but answers

them first by citing some words of the Apostolic writings bidding men to obey princes and kings for God's sake, and then by urging that the " order " of justice and of human affairs required that the inferior should obey the superior, and that the faith of Jesus Christ did not suspend the " order of justice " or the necessity of obedience. He adds, however, and it is very significant, that this obedience is only due so far as justice requires it, and that subjects are not bound to obey an unjust or usurped authority, or an authority which commands unjust things.¹

In another place he discusses the nature of sedition, and the question whether it is a mortal sin. He concludes that it is so, and in this case the reason which he gives is not theological but philosophical. He quotes from St Augustine Cicero's well-known definition of the " populus," and says that it is therefore clear that sedition is opposed to justice and the common good, and is a grave mortal sin, for the common good is greater than the private good. Again, however, in the same " Article " he adds that a revolt against a tyrannical and unjust authority has not the nature of sedition, for such an authority is not directed to the common good, but only to the convenience of the ruler.²

In a passage in his treatise, ' De Regimine Principum,' St Thomas goes even further, and while he maintains that human life has an end even beyond the life of virtue, that is the fruition of the divine ; and while it is the function of the priest to teach men the way to his true felicity, it belongs to the king's duty to order human life in such a way that men may attain to this true felicity.¹ The true aim of the king should be so to order things that his subjects may live the good life, and the good life is the life according to virtue.²

It is important to observe that these principles of the legitimate nature and moral end of the

State are not limited to Christian States, but were represented by the most authoritative writers of the thirteenth century as extending to all States, even those of the unbelievers. Innocent IV., in his ' Commentary on the Decretals, ' sets out this principle with great directness. Lordships, possessions, and jurisdictions are lawful and blameless among the unbelievers, for these were created not only for the faithful, but for all rational creatures, as it is said, God makes the sun to rise upon the evil and upon the good, and therefore neither the Pope nor other Christian men have any right to destroy the governments of the unbelievers.¹

St Thomas Aquinas maintains the same doctrine, and even admits that an actually existing authority of unbelievers over Christian people is legitimate, though it may be abolished by the authority of the Church. Dominion and political superiority were created by human law, but the divine law, which is of grace, does not destroy the human law, which arises from natural reason, and therefore the distinction between believers and unbelievers does not of itself destroy the authority of unbelievers over the believer.²

It is therefore clear that in the judgment of all the writers on political theory in the thirteenth century there is no doubt whatever that the end and purpose of the State is a moral one—that is, the maintenance of justice, or, in the terms derived from Aristotle, the setting forward of the life according to virtue, and that the authority of the State is limited by its end—that is, by justice, and that it is derived from God Himself.

CHAPTER IV.

THE NATURE OF LAW.

WE have in the last chapter endeavoured to set out our confident judgment that to the Middle Ages it was clear that the nature and purpose of the State was a moral one, that it came from God, and that its function was to maintain and set forward justice. This may at first sight seem a conception which, however important, is somewhat abstract, and therefore, in order to appreciate its full significance, we must go on to observe that both to the thinkers and to the practical men of the Middle Ages justice had a definite and concrete embodiment in the law.

We shall have occasion presently to consider the beginnings of the theory of what is called sovereignty, but it is impossible to understand the political ideas of the people of the Middle Ages at all, if we do not begin by understanding that to them there was only one supreme authority in the State, and that was not the ruler, whether king or emperor, but only the law. Behind the law' of the State there was, indeed, a more august law' still, the law' of nature or of God, to which the law' of the State was subordinate. But within the State, and subject always to this higher authority, the law' was supreme.

We may, indeed, say that it was the characteristic defect of mediaeval civilisation that it was, if anything, too legal; but as the men of that time saw' it, it was the majestic fabric of the law which stood between them and anarchy, the anarchy of mere disorder, or the anarchy of a capricious tyranny. To them liberty, true liberty, was not something contrary to law, but rather was to be found in law itself. We have in

previous volumes endeavoured to set out something of all this, and we have seen that in this matter there was no difference between the political writers of the ninth century and of the eleventh and twelfth, between Feudalists and Civilians ; ¹ but we may here recall a few of their most significant sayings. Let the king, says Bracton, recognise in the law that same authority which the law gives to him, for there is no king where mere will rules and not the law. The Lord or the Lady is only Lord of law (or right), they have no authority to do wrong ; such is the doctrine of the Assizes of the kingdom of Jerusalem.² The Bologna Civilians are only expressing the same judgment in more general terms when Azo says of justice that it is the mind or will of God which is in all things right and just, and when the author of the ' Prague Fragment ' says that the law flows from justice as a stream from its source.³

Before, however, we deal with the questions related to these principles, we must in this chapter consider the systematic treatment of the nature of law in its largest sense by St Thomas Aquinas, so far, that is, as it is related to our subject.

There are two very important sections of the ' Summa Theologica ' in which he considers this : in the first he considers it in relation to reason, in the second he deals with it in relation

to justice. He begins his discussion by considering the relation of law to reason, and maintains that the proper character of law is to command and to forbid ; but to command belongs to reason, therefore law is a thing related to reason. It is reason which directs things to their end.¹

Having thus set out the general nature of law, he goes on to discuss it under four terms—the eternal law, the natural law, the divine law, and human law. St Thomas deals first with the eternal law. It is manifest, he says, that the whole universe is governed by the divine reason, and therefore this “ratio gubernationis ” has the character of law; the end of the divine government is God Himself, and His law is not other than Himself.²

The natural law is different from but related to this. All things which are subject to the divine providence are indeed controlled by the eternal law, but the rational creature is subject to the divine providence in a more excellent way, for it partakes in the work of providence, it “ provides ” for itself and others, and this participation of the rational creature in the eternal law is called natural law. The light of natural reason, by which we discern what is good and what is evil, belongs to the natural law; it is nothing else than the impression of the divine light in us. The natural law is, therefore, the participation of the rational creature in the eternal law.¹ St Thomas was indeed aware of the fact that the term natural law had been and might be used in more than one sense,² but his own conception is perfectly clear.

In order, however, to understand the full significance of this conception, we must observe another distinction of great importance, which St Thomas makes in another place—that is, the distinction between natural law and positive law, a distinction which applies both to human and divine law. Men can, by a common agreement, establish a law as just, in matters otherwise indifferent, so long as it is not contrary to natural justice, and this is positive law ; and there is a positive divine law as well as a natural.¹

The term Divine law is used by St Thomas to describe that twofold law of God which is revealed in the Old and New Testaments. It was needed for various reasons, because the final end of man is beyond human reason, because of the uncertainty of men’s judgments, because human law can only deal with the external actions of men, because human law cannot prohibit or punish all evil actions, lest it should do more harm than good. The divine law does not indeed contradict or annul the natural law, but it was added that men might participate in the “ eternal law ” in a higher manner.²

Human law is described by St Thomas in another article of the same question under the terms of its relation to reason. Law is a command of the practical reason, for the human reason must draw out and apply to particular circumstances the general precepts of the natural law.¹ St Thomas, however, also points out that this general conception of the nature of human law requires a further analysis. The term human law includes two different kinds of law, the “ ius gentium ” and the “ ius civile.” The first is derived from the natural law, as conclusions are derived from premisses, and forms that body of laws without which men could not live together. The second is derived from the natural law, “ per modum particulars determinationis,” and is that which any State establishes as being suitable to its own conditions.²

Law, then, in all its forms is the expression of reason, but it is also, in the judgment of St Thomas, the expression of justice, and we must briefly consider this. He accepts the definition of justice, given by Ulpian in the ‘ Digest,’ “ Justitia est constans et perpetua voluntas jus suum cuique tribuendi ” (‘Dig.,’ i. 10) if it is properly understood.¹ In a later “Quaestio” indeed, he discusses the various parts or aspects of justice, and accepts the Aristotelian distinction between “ distributive ” and “ commutative ” justice.² It does not, however, appear that in St Thomas’ judgment this interferes with the general truth of Ulpian’s definition.

The whole system of law, and here St Thomas uses the word “jus,” is so called, according to St Isidore, because it is just (justum), and the just and “jus ” are the “ objec- tum ” of justice,³

and St Thomas gives his considered and emphatic assent.⁴

He therefore goes on to describe “judicium,” which is the action of the judge, as being the definition or determination of that which is just or lawful, and this belongs to justice ; this is what Aristotle meant when he said that men go to the judge as to a living justice.⁵ Perhaps the most emphatic

assertion by St Thomas of the relation between law and justice may be found in another “ Article ” of the same “ Question,” where he asks whether the judgment of the judge must always be in accordance with the law. He decides that while normally this must be so, this will only hold if the law is just. Laws which are contrary to the natural law are unjust, and have no force. It may even happen that laws which are in themselves right may not be adequate to certain cases, and would, in such cases, be contrary to the natural law. In such circumstances men must not judge according to the letter of the law, but must recur to that equity which the legislator desired to attain.¹

St Thomas’ conception of the nature of law is, then, founded upon two principles, that it is the expression of reason, and that its purpose is justice. It is interesting to compare his conception with that of the mediaeval Jurists, with which we have dealt especially in the second and third volumes of this work.¹ His treatment represents a very important development of the significance of the rational element in law, while it also brings out very emphatically the fundamental mediaeval conception of its moral or ethical nature.

CHAPTER V.

THE SOURCE OF THE LAW OF THE STATE—I.

WE have so far considered the mediaeval conceptions of the nature of law as representing the principles of reason and justice, or, to put it into the other terms of that time, human law as limited and controlled by the law of nature. We must now consider the more immediate source of the law of the State, the authority from which it proceeded, and upon which it rested. In this chapter and the following, we shall endeavour to set out what we venture to think were the normal mediaeval conceptions upon the subject, and to trace the beginnings of another mode of thought.

We have in previous volumes set out what appears to us the first and in some sense the most fundamental aspect of the mediaeval conception of the nature and source of the law of the State—that is, that it was custom. We have seen that this was the conception of the feudal jurists,¹ and that this was also the first principle of the Canon Law.² We shall have presently to deal with the question of the relation of the Civilians of Bologna and the revived study of the Boman law to the question of the source of law ; but for the moment it is enough to observe that the Civilians also were clear that custom had once been its source.³ The principle is admirably expressed by Beaumanoir for France, when he says that all pleas are determined by custom, and by Bracton for England, when he asserts that England is governed by unwritten law

and custom. It is no doubt true that Bracton thought that this was peculiar to England—a curiously inaccurate judgment, probably due to an impression that the other European countries lived under Boman law.¹ What is thus affirmed for their own countries by Beaumanoir and Bracton became a sweeping and all-including generalisation in Gratian, when he opened his ‘ Decretum ’ with the famous words, founded upon Isidore of Seville, “ The race of mankind is ruled by two things, by natural law and by custom.”²

We venture to urge that it is quite impossible to understand the political structure of mediaeval society and the nature of mediaeval government unless we begin by taking account of this conception. We are so much and so naturally, if not very intelligently, influenced by the belief in the existence of a conscious sovereign authority, of which law is the expression, that we find it difficult to understand the state of mind of those ages when the conception of the sovereign, in the modern sense of the word, hardly existed.

The first question to which we must here address ourselves is how far this conception of law, as proceeding from or controlled by custom, was maintained in the thirteenth century by writers with whom we have not yet dealt, or in countries whose laws we have not yet

examined.

And first, we may observe the careful and yet confident mode in which St Thomas Aquinas sets out the principle of the authority of custom. In a discussion of the question whether law can be changed, he considers the question whether custom has the force of law. He cites various objections which could be alleged, and then states his own conclusion. He first cites the famous words of St Augustine that the custom of the people of God and the institutions of men's ancestors are to be accepted as law, and then proceeds to say that law is the expression of the reason and will of the legislator, but these are declared as plainly by men's actions as by their words, and therefore the frequently repeated actions of men which constitute custom can change or establish or interpret law.¹

He goes on to contend that, as human laws may not cover all cases, it may be right sometimes to take action which is outside of the law, and when such cases are multiplied owing to some change in men, custom shows that the law is no longer useful. And he even adds that, while normally, if the conditions remain the same, the law founded upon these conditions will prevail over custom, there may be cases where the law is useless, simply because it is contrary to the custom of the country, for this is one of the conditions of law—it is difficult to change the custom of the multitude.²

It is clear that while St Thomas recognises other forms of law besides the custom of the people, he does substantially represent the conception of custom as a main source of law. It is, however, clear that St Thomas Aquinas implies that there were other forms of law besides custom, and we shall presently deal with these. The important point of the passages which we have just considered is that, whatever other forms of law there might be, he was clear that custom lay behind them, and was still paramount over them.

This is also the position of some other very important -writers of the later thirteenth century. Vincent of Beauvais, in his 'Speculum,' cites the significant words of Gratian, in which he laid down the principle that even when laws were instituted by a competent authority, they needed to be confirmed by the custom of those who were concerned.¹ Albert the Great seems also to refer to the same doctrine when he says that the edict of the Prince which is maintained by custom has the force of written law.² What is, however, much more significant is the treatment of the authority of custom by the most important Canonist, and the most authoritative Civilian of the second half of the century.

Hostiensis, in his 'Commentary on the Decretals,' describes the nature and the authority of custom, and clearly accepts the judgment of Gregory IX. that custom if it is "rationabilis et legitime prtescripta," prevails over other forms of positive law.³ Odofridus, in his 'Commentary on the Digest,' draws attention to the divergence between this judgment of Gregory and the passage in the 'Code' (viii. 52 (53)), in which Constantine had apparently maintained that custom could not

over-ride law.¹ Odofridus says that there had been much controversy over this question, and cites the opinion of Placentinus that, while in earlier times the Roman people could make law and its custom could abrogate it, nowadays it was only the Emperor who could make law, and therefore the custom of the people could no longer annul it. Odofridus himself, however, emphatically repudiated the opinion of Placentinus, and maintained that the Roman people could still make law, and that, therefore, its custom could still annul it.² Odofridus was, as it is thought, a pupil of Azo, and represented the tradition of his master.³

The opinions of these writers are interesting and important, but, after all, they are of little importance as compared with the clear and dogmatic statements of the great feudal lawyers like Bracton and Beaumanoir on the principles of the system of law which they had to interpret and administer in the latter part of the thirteenth century. We may add that the same judgment as to the legal authority of custom is clearly laid down in the great law book of Castile, which we know as the 'Siete Partidas' of Alfonso X. There are, it says, only three things which can hinder the force of law: the first is "uso," the second is "costumbre," and the third is "fuero."¹ We shall, however, presently return to the conception of law in Spain, and treat it in detail.

Enough, we think, has been said to make it clear that the first and, as we think, the fundamental principle of the Middle Ages was that the law was the expression, not so much of the deliberate and conscious will of any person or persons who possessed legislative authority, but rather of the habits and usages of the community. It is not our part here to endeavour to trace the whole significance of this conception, but we may be allowed to point out that this does not mean that law as custom was something unintelligible or irrational. It does not require any great consideration to enable us to understand that the custom of a community was determined by the conditions or environment under which it lived, and by the moral ideas such as they were, and however they arose, which possessed the community. We may be allowed to point out that this is true not only of the customary law of a primitive community, but in the long run of all systems of law.

It is also important to remember that this customary law was not really unchangeable and fixed. On the contrary, it is evident that at least in what we call progressive countries it was continually changing with the change of circumstances or ideas. It is probably, on the other hand, reasonable to think that this unconscious movement was not always sufficient to accommodate itself to such a development of civilisation as took place in the centuries from the eleventh to the thirteenth.

However this may be, it is clear that in the twelfth and thirteenth centuries we can trace the appearance and development of another method of conceiving of the source of law—that is, the beginning of the conception that law is the expression of the will of some conscious legislative authority. We have arrived, that is, at the beginnings, for the modern world, of the conception of sovereignty—that is, that there exists in every independent society some power of making and unmaking laws.

We have, a few pages back, referred to the statement of Bracton that England was governed by custom and not by written law ; but the same passage which contains these words contains also words which express a different conception of the nature of the authority on which law is founded. Other countries, he says, are governed by written laws, England by unwritten law and custom ; but these English laws may properly be called “leges,” for that has the force of law which has been justly determined and approved with the counsel and consent of the great men, the approval of the whole commonwealth, and the authority of the King.¹ Such laws, he adds in another place, when they have been approved by the consent of those who are concerned (utantium) and have been confirmed by the oath of the King, cannot be changed or annulled without the counsel and consent of those by whose counsel or consent they were promulgated.²

Here we have a clear statement of the conception that there is a definite legislative authority which enacts and promulgates laws. What was, then, the nature of this authority ? We have in the third volume set out our conclusion that the feudal and national jurists of the twelfth and thirteenth centuries clearly held that the legislative authority resided not in any one person, but belonged to the whole community, acting through all its parts, the King, the great men, and the whole body of the people ; ¹ and in the first volume we have endeavoured to show that this principle was already firmly established in the ninth century.²

The words of Bracton which we have just quoted are only one expression of a general principle. Lest, however, it should be thought that this was only an abstract or speculative principle of the jurists, we will briefly examine the legislative forms of the twelfth and thirteenth centuries in the various European countries, and we shall see that nowhere in the constitutional methods of the great European countries is there any sign that the legislative power belonged to the king alone, but always that the king acted with the advice and consent of the great men, and behind them we see from time to time the whole community. We must bear in mind that it is impossible in the Middle Ages to draw a sharp line between what we should call legislative and administrative action.

If we go through the constitutions of the Empire, we shall find that they are issued not by the emperors alone, but with the advice and consent of the princes. This is obvious even of the

great Frederick II. He renewed in 1213 the promises made by Otho IV. to Innocent III. with respect to the territories claimed by the Papacy, and did this with the counsel and consent of the princes of the Empire.³ It is with the same counsel that in 1226 he annulled the communal privileges of the citizens of Cambrai.⁴ He proclaimed the ban against various Lombard towns in the same year with the deliberation and judgment of the princes and other chief men of the Roman Empire.⁶

The most noticeable phrase is, however, that which is prefixed to the constitution of 1235, which created an important new official, the "Justitiarius," who was to act in judicial matters during the absence of the emperor. Frederick begins by saying that ancient custom and unwritten law had not provided for some important matters which concerned the tranquillity of the empire, and therefore it was that with the counsel and assent of the princes and other faithful men of the empire assembled in a solemn council (curia) held at Mainz he had promulgated certain constitutions.¹

It would seem that there is implied a contrast between the tradition and the custom of the empire, and the new constitution, which is issued by the emperor not alone, but with the authority of the Council of the Empire.

If we turn from the Empire to the kingdom of France, we find that the same principle is illustrated in the "Ordonnances" of the twelfth and thirteenth centuries. It is important to observe this, because there has been a tendency in some works on French history to speak of the mediaeval French king as exercising some isolated legislative authority. This view is not consistent with the fact that the formulas of legislation which we find in the ordinances are of almost exactly the same nature as those which we find in the other European countries at that time, and which, as we have shown in our first volume, were already used in the ninth century.²

Louis the Fat in 1118 issued a regulation about the privileges of the serfs of St Maur des Fossés with the common counsel and assent of the bishops and great men.¹ Philip Augustus in 1209 issued an ordinance concerning feudal tenures, but the formula of legislation is one which hardly distinguishes between the royal authority and that of the great princes and barons.² In one ordinance of St Louis of 1246 we have a careful statement of procedure. He first called together at Orleans the barons and magnates of that province, and learned from them the custom of the province, and then, with their counsel and assent, commanded it to be firmly observed in the future.³

It is true that in the reign of Philip III. we find in a number of cases, in place of the formula of the counsel and assent of the barons, the phrase "in Parlamento" or "in pleno Parlamento,"⁴ while in other cases we find such phrases as "ordinatum fuit per Dominum regem et ejus consilium."⁵ In the reign of Philip IV. we find an ordinance issued "par la cour de nostre seigneur le Rey,"⁶ and another "in Parlamento."⁷ In the first case these formulas are apparently taken to be equivalent.⁸

In other cases, however, in the reign of Philip IV., we have the traditional form, including the reference to the barons and the prelates. This is especially noticeable in the demand for the surrender of at least half of the silver plate belonging to the clergy and laity of the kingdom in August 1302,¹ and in the general ordinance for the levy of money for the war in Flanders in the same year.² The most significant of all these phrases, however, are those of the letter of 1303 to the Bishop of Paris, which communicates the ordinance made for the levy of soldiers for the war in Flanders. The ordinance was made with the deliberation and counsel of those prelates and barons who could be got together; but Philip obviously is aware that all the prelates and barons of the kingdom ought to have been summoned to consider this, and makes the excuse that time had not permitted it.³

It would seem clear that, while it may be right to make some distinction between the authority of the king in the royal domain and that which he exercised in France as a whole, the formulas of legislation show that there was no substantial distinction between the constitutional principles of legislation as they obtained in France and in other countries. The counsel and consent of the great men of the kingdom is no doubt what Beaumanoir meant

when he said that the king had the right and authority to make “ *estabUssemens* ” for the whole kingdom for a reasonable cause, for the common good, and “ *par grant conseil.*” ⁴

It is hardly necessary to argue that the same principles were recognised in England. The question has been handled with characteristic caution and detail by Stubbs,¹ and we cite, merely as illustrations of the principle, the formulas of legislation used by Edward I. in the Statutes of Westminster of 1275 and the Statute De Religiosis of 1279.² The truth is that the process of legislation, as we see it in England, corresponds precisely with the description of it by Bract on which we have cited.³

It is important, however, to observe that the same conceptions of the nature of law and legislation are represented in the Spanish law-books and constitutional documents of the twelfth and thirteenth centuries. We have not hitherto dealt with these, but their evidence as to mediaeval political principles is abundant and significant. We have thought it well to discuss them in some detail, both on account of their intrinsic importance, and also because there has been some tendency, even in recent and accomplished historians, to speak as though the Spanish kings at least in Castile claimed and exercised a legislative authority of a kind different from that which, as we have seen, obtained in the other countries of Western Europe.

The cause of this misunderstanding, as far as it exists, may possibly be found partly at least in the fact that Alfonso X. of Castile sometimes uses language which might seem to imply that he claimed to be a sole and absolute legislator. In one significant passage of the ‘*Especulo*’ he sets out the grounds on which he claims to possess the legislative authority. These are: first, that if other emperors and kings who are elected to their office possess this power, much more should he, who held his kingdom by hereditary right; second, because the kings of Spain had this authority before him; and third, because he could prove his right by the Roman law, by Church law, and by the ancient Gothic laws of Spain.¹

That this does not mean that Alfonso claimed that he had an absolute or sole power in making laws will appear if we look a little further. In the ‘*Siete Partidas*’ he states very emphatically that laws must not be abrogated without the great deliberation of all the good men of the country,² and in the following chapter he explains that if there should arise occasion for further legislation, the king is to be advised by wise and understanding men.³ These principles correspond with the words which Alfonso used in the introduction to the ‘*Especulo*.’ He says that this collection of laws was made with the counsel and consent of the archbishops and bishops, the “*Ricos Ornes*,” the men most learned in the law, and others of the court and the kingdom.¹ When, therefore, we find Alfonso maintaining that no one can make laws except the emperor or the king, or other persons by his command, and that all laws made without his command are not laws at all,² we must not understand this as meaning that the king was the sole legislator, but only that he was an indispensable party to legislation, and that no laws could be made without his consent.

The truth is that, when we carry our examination a little further, we shall recognise that the general principles of legislation and of the nature of law were substantially the same in Castile as those which obtained in other Western countries in the Middle Ages.

As we have seen, the first and fundamental mediaeval principle of law was the authority of custom. The ‘*Siete Partidas*’ belongs to that time when the conception of a deliberate legislative process was becoming important, at least in theory; but it is evident that the conception of the legal effects of custom was still strong in the mind of the author. In an early passage he asserts that “*uso*,” “*costumbre*,” and “*fuero*” have naturally the character of law (*derecho*), and that they can hinder the law (i.e., the written law).³

The author distinguishes these terms with some care. “*Uso*,” he says, arises from those things which men do or say for a long time and without any hindrance.¹ “*Costumbre*” is described as that which a people does for ten or twenty years, with the knowledge and consent of the lord of the land, and the judgments of men competent to judge.² “*Fuero*” arises from “*uso*” and “

costumbre," but it differs from them, for it is related to all matters which belong to law and justice,³ and it is to be made with the counsel of good and prudent men, with the will of the lord, and the approval of those who are subject to it.⁴

It is after Alfonso has thus dealt with law as custom that he goes on to deal with written law (ley), and he deals with this as a thing which arises out of customary law. The written law is, indeed, in his judgment more honourable and better than the customary law. It can only be made by wise and understanding men, and only by the greatest and most honourable lords, like emperors and kings, and the fact that it is written prevents it from being forgotten. Even here, however, it must be observed that Alfonso admits that custom can annul the "laws."¹ It is clear that in Castile, as in the other European countries, even when the conception of the deliberate and conscious process of legislation became important, and when the written law was thought of as superior in some respects to custom, law was still conceived of as arising from custom, and it was still recognised that custom might modify and abrogate law.

We must, however, examine a little further the principles of legislation in Castile and Leon. Alfonso, as we have just seen, recognises that laws are to be made with the advice of wise and understanding men ; it might be suggested that this is not quite the same thing as the normal legislative method of other Western countries in the Middle Ages. We must, therefore, examine the proceedings of the Cortes of Leon and Castile, and of those less completely organised assemblies which preceded them. It will then become evident that these Assemblies, as far as they can be traced back, exercised a legislative or quasi-legislative authority.

The Bishops, Abbots, and Optimates of what they term the kingdom of Spain met at Leon in 1020 A.D., and in the presence and at the command of the king, Alfonso and his wife made certain decrees which, as they said, were to be firmly established for future times.¹ King Ferdinand held a council at Coyanza in 1050 with the Bishops and Abbots and Optimates of his kingdom, and there issued his decrees.²

We have an explicit declaration of the legislative authority of these councils in a clause of the proceedings of that Council of Leon, probably of the year 1188, in which there is a reference to the presence of elected representatives of the cities. (We shall return to this matter in a later chapter.) The king, Alfonso IX., promised that he would not make war or peace or issue a decree (placitum) without the counsel of the bishops, nobles, and good men by whose counsel he recognised that he ought to be ruled.³

We find the same King Alfonso IX. at a council held at Leon in 1208, which was attended by the bishops, the chief men, and the barons of the whole kingdom, and the representatives of the cities, issuing a law, after much deliberation and with the consent of all.¹

Finally, we find the same principles of legislation expressed by Alfonso X. himself, in issuing the decrees of a council held at Valladolid in 1258 for Castile as well as Leon. He relates how he had taken counsel with the archbishops, the bishops, the "ricos omes," and the good men of the cities of Castile, Estremadura, and Leon about many things which had been done to the hurt of himself and all his country, and that they had agreed to put an end to these. To that which they had established he gave his authority, that it should be received and kept throughout all his kingdoms.² It is not necessary to carry the matter further, for it is evident that we have here the normal procedure in legislative or quasi-legislative action. The same or similar formulas are used and the same principles expressed in the proceedings of the Cortes of Valladolid of 1295 and 1299, of Burgos in 1301, of Palencia in 1313, and of Burgos in 1315.³

It appears to us to be evident that the Spanish conception of the nature and source of law was in its most important aspects the same as that of the other countries of Western Europe.⁴

It is then, we think, clear that the normal tradition of the thirteenth century was characteristically represented by the words of Bracton which we have cited. The emperor or king had his place in legislation, but it was not an isolated place, nor had he any arbitrary or unlimited authority. When circumstances called for anything more than the enunciation or

restatement of custom, the ruler acted with the counsel and consent of the great men, lay and ecclesiastical, and behind them we see more or less distinctly the whole community, for, as must be remembered, the custom of the community was the ultimate source of law